

Stopgap Terms of Engagement With (Limited Company) Candidates For Temporary Assignments

1. DEFINITIONS

1.1 In these Terms of Engagement the following definitions apply:

"Assignment Term" means the period during which the Contractor engaged by Stopgap to render the services of the Temporary Worker to the Client commencing on the commencement date set out in the Confirmation Letter (subject to earlier termination);

"AWR" means the provisions of the Agency Workers Regulations 2010;

"Client" means the company set out in the Confirmation Letter;

"Client Site" means the site where the Services are to be performed as specified in the Confirmation Letter;

"Contractor" means the limited company listed in the Confirmation Letter engaged by Stopgap to provide the Services;

"Confirmation Letter" means a written letter from Stopgap to the Contractor specifying the Services and the details of such supply by the Contractor;

"Day Rate" means the rate set out in the Confirmation Letter;

"Notice Period" means 48 hours or such other period set out in the Confirmation Letter; "Relevant Period" means as defined in the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

"Services" means the services to be provided by the Contractor to the Client;

"Temporary Worker" means the individual listed in the Confirmation Letter;

"Terms" means these Terms of Engagement;

"Stopgap" means Stopgap Limited, the employment business whose registered office is at Goodwin House, 5 Union Court, Richmond, TW9 1AA trading as Stopgap.

2. THE CONTRACT

2.1 These Terms constitute a contract for services between Stopgap and the Contractor for the provision of the Temporary Worker to provide the Services.

2.2 These Terms are complete and exhaustive and shall be in substitution for any other terms or arrangements made between the Contractor and Stopgap. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between Stopgap and the Contractor and set out in writing.

2.3 By accepting the Confirmation Letter and/or commencing the provision of the Services (whichever is the sooner) the Contractor is deemed to have accepted these Terms in their entirety.

3. SERVICES

3.1 The Contractor shall supply the Temporary Worker to commence the Services on the commencement date set out in the Confirmation Letter and continue for the Term unless and until terminated in accordance with clause 10.

3.2 The parties agree that the Temporary Worker shall not commence any Services until the Contractor has provided to Stopgap such information as is reasonably required including the following information concerning the Temporary Worker:

- (a) suitable references;
- (b) evidence of the Temporary Worker's entitlement to live and work in the UK;
- (c) proof of identity, copies of any qualifications, training and experience required by the Client, or required by law or any professional body in the provision of the Services;
- (d) notification to Stopgap if the Temporary Worker will not live at his/her normal place of residence during the provision of the Services; and
- (e) if requested by Stopgap or the Client, a signed confidentiality agreement.

4. STATUS AND TAX LIABILITIES

4.1 This is a contract for services and not an employment contract, nothing in these Terms or the Confirmation Letter will create the relationship of partnership or employer and employee between Stopgap and the Contractor or Temporary Worker or between the Client and the Temporary Worker.

4.2 The Contractor acknowledges and agrees, and shall procure that the Temporary Worker acknowledges and agrees, that the Temporary Worker will not constitute an agency worker for the purposes of Regulation 3(1) of the AWR and Stopgap enters into this agreement on that basis. The Contractor agrees and acknowledges that by virtue of this contract, the Temporary Worker is available to work for the Client and that this contract has the effect that the status of the Client is that of a client or customer of the Contractor which is a profession or business undertaking carried on by the Temporary Worker. It is therefore, agreed and understood by the parties that the Temporary Worker falls into Regulation 3(2)(b) of the AWR. The Contractor shall indemnify Stopgap and the Client and keep them indemnified in respect of any liability or obligation and any related costs, expenses (including legal expenses) or other losses which Stopgap and/or the Client may incur, arising from any claim by any Temporary Worker that he/she is an agency worker for the purposes of the AWR.

4.3 The Contractor warrants to Stopgap that it is a company incorporated in the United Kingdom and is not a 'managed service company' as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003.

4.4 The Contractor agrees, and shall procure that the Temporary Worker agrees, it will provide promptly to Stopgap any information requested by Stopgap that may be required to satisfy statutory legislation and/or reporting requirements.

5. DAY RATE

5.1 Stopgap shall pay (or the Client shall pay if stated in the Confirmation Letter) to the Contractor the Day Rate monthly in arrears in accordance with the days/hours worked in the completed and signed timesheets submitted to Stopgap by the Contractor.

5.2 All payments will be made to the Contractor and the Contractor shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Temporary Worker and the Contractor shall notify Stopgap immediately if it becomes subject to an investigation by HMRC in respect of its own and/or the Temporary Worker's tax affairs which relate to the Services or these Terms. The Contractor shall indemnify Stopgap and the Client against all reasonable costs and expenses and any penalties or interest incurred or payable by them in connection with or arising out of any assessment or claim.

5.3 The Temporary Worker shall not be entitled to receive any additional payment from either Stopgap or the Client for any period in which he is unable for any reason to provide the Services.

5.4 At the end of each week of an Assignment Term the Contractor shall deliver to Stopgap or if directed by Stopgap to the Client (with a copy of the timesheet to Stopgap) the Temporary Worker's timesheet duly completed to indicate the number of hours worked by the Temporary Worker during the preceding week signed by an authorised representative of the Client. This timesheet must be accompanied by an invoice from the Contractor for the amount due, the invoice should include the Contractor's VAT number and any VAT due. Stopgap must receive such timesheets by no later than 7 days of the end of the period to which the timesheet relates.

5.5 The Contractor acknowledges that it is a serious criminal offence to claim hours/days worked which are in excess of those actually undertaken. In respect of each month worked the Contractor undertakes to Stopgap that the number of hours worked as stated on the timesheets are correct and accurate and the Services have been provided to the highest professional standards and could not reasonably become subject of any complaint by the Client.

5.6 Where the Contractor fails to submit a properly authenticated timesheet Stopgap shall be entitled to withhold payment and, in a timely fashion, conduct further investigations into the hours claimed by the Contractor and the reasons that the Client has refused to sign a timesheet in respect of those hours.

6. LIABILITY

6.1 The Contractor shall be liable for any loss, damage or injury caused to Stopgap or the Client by any default of the Temporary Worker in the provision of the Services.

6.2 The Contractor shall ensure the provision of adequate Employer's Liability, Public Liability and Professional Indemnity Insurance and any other suitable insurance in respect of the Contractor and the Temporary Worker during the provision of the Services and shall make a copy of the policies available to Stopgap upon request. Some Clients require specific levels of insurance and the Contractor shall ensure that it adheres with all such requirements.

6.3 The Contractor agrees to indemnify Stopgap and the Client against all and any loss, damage, claims and costs (including legal costs) incurred by Stopgap and/or the Client as a result of any breach or non-performance of any of the Contractor's or Temporary Worker's obligations or as a result of any claim or demand against Stopgap or the Client for PAYE Income Tax, National Insurance Contributions relating to the Services and/or the Temporary Worker or as a result of any claim brought in whatever form or forum by the Temporary Worker on the claimed grounds that he/she is an employee or worker of Stopgap and/or the Client.

6.4 Stopgap may at its option satisfy the indemnities in these Terms (in whole or in part) by way of deduction from the Day Rate and/or any other remuneration owing to the Contractor.

7. CONTRACTOR'S OBLIGATIONS

7.1 The Contractor warrants and undertakes that it shall on its own part and shall procure that the Temporary Worker shall:

- (a) Provide the Services at all times to the best of his/her knowledge, power and ability and act in the best interests of the Client
- (b) Not engage in any conduct detrimental to the interests of Stopgap or the Client;
- (c) Be present during the times or for the total number of hours during each day and/or week of the Assignment Term as are set out in the Confirmation Letter or may be agreed with Stopgap or the Client;
- (d) Be entitled to work in the country of the Site and all information supplied to Stopgap concerning his/her background, training, qualifications and work experience is complete and accurate;
- (e) Comply with all statutory obligations and codes of practice including but not limited to the Working Time Regulations (WTR). For the purposes of the WTR, it is not intended that the Temporary Worker will be required to work on average in excess of 48 hours per week averaged over a period of 17 weeks. However, the Contractor shall procure that the Temporary Worker agrees to work in excess of an average of 48 hours per week if required. If a Temporary Worker wishes to terminate his agreement to opt out of the 48-hour average limit, the Contractor must give Stopgap 1 month's written notice of his intention to do so;
- (f) Comply with any rules or obligations in force at the Site and other similar instructions given by the Client;
- (g) Furnish Stopgap with any progress reports as may be requested from time to time;
- (h) Not sub-contract to any third party any of the Services which it is required to perform under any Confirmation Letter; and
- (i) If, either before or during the course of an Assignment Term, the Contractor becomes aware of any reason why the Temporary Worker may not be suitable for the Services it shall immediately notify Stopgap.

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7.2 In the event that Stopgap and/or the Client are dissatisfied with the Services, Stopgap shall be entitled to require the Temporary Worker to promptly re-perform the relevant part of the Services to the satisfaction of the Client; Stopgap shall be entitled to deduct such costs from any Day Rates due or claim reimbursement of any Day Rates paid.

7.3 In the event that a Temporary Worker believes they may have rights under the AWR, the Contractor shall procure that the Temporary Worker raises such belief with Stopgap's Contracts Manager within 7 days of such belief arising. The Contractor shall procure that the Temporary Worker complies with any of the Contractor's information requests so arising, if any.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 In consideration of the Day Rate, the Contractor hereby assigns and shall procure that the Temporary Worker hereby assigns to Stopgap (by way of present assignment of future rights where applicable) or to the Client if requested by Stopgap all intellectual property rights (to include without limitation all patents, trade marks, registered and unregistered designs, copyright, database rights, rights in confidential information and any other and similar rights which may subsist anywhere in the world (whether in existence now or coming into existence at any time in the future) in any materials, works created, produced or developed by the Contractor or Temporary Worker (either individually or otherwise) in the performance of the Services.

8.2 The Contractor hereby agrees to waive and shall procure that its Temporary Worker hereby agrees to waive all its moral rights which it may have in respect of any materials or works developed in the provision of the Services.

8.3 The Contractor shall and shall procure that the Temporary Worker shall execute any such document or do any thing necessary for the purpose of giving to Stopgap or the Client, the full benefit of this clause 8.

9. CONFIDENTIALITY

9.1 In order to protect the confidentiality and trade secrets of the Client and Stopgap and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Contractor agrees on its own part and on behalf of its Temporary Worker as follows:-

(a) Not at any time whether during or after the Assignment Term (unless expressly so authorised by the Client or Stopgap) to disclose to any person or to make use of any of the trade secrets or confidential information of the Client; and

(b) To deliver up to the Client or Stopgap (as directed) at the end of the Assignment Term all documents and other materials belonging to the Client which are in its possession including documents and materials created by it during the Assignment Term.

10. TERMINATION

10.1 Stopgap may terminate a Confirmation Letter by giving the Contractor the Notice Period.

10.2 Stopgap shall be entitled without notice and without liability to terminate the Contractor's appointment with immediate effect if:

(a) The Contractor is in breach of any of the obligations set out in these Terms or in any way conducts himself in an unprofessional manner;

(b) The Contractor becomes insolvent, dissolved or subject to winding up petition;

(c) The Temporary Worker refuses to perform the Services or in the Client's sole opinion fails to perform the Services to the required standard; or

(d) For any reason the Temporary Worker proves unsatisfactory to the Client.

10.3 If Stopgap terminates the Confirmation Letter under clause 10.2 above Stopgap shall be entitled to deduct from any payment owing to the Contractor a sum equal to the costs incurred by Stopgap as a result of the event entitling it to terminate.

10.4 If the Temporary Worker is unable for any reason to provide his/her Services the Contractor shall inform Stopgap by no later than 10.00 am on the first day of absence to enable alternative arrangements to be made.

10.5 The Contractor acknowledges that the continuation of a Confirmation Letter is subject to the continuation of the contract entered into between Stopgap and the Client. In the event that the contract between Stopgap and the Client is terminated for any reason the Confirmation Letter shall cease with immediate effect without liability to Stopgap.

11. RESTRICTION

11.1 If before the first Assignment, during the course of an Assignment or within the Relevant Period the Client wishes to employ the Temporary Worker direct or through another employment business, the Contractor acknowledges that Stopgap will be entitled either to charge the Client a Day Rate or to agree an extension of the hiring period with the Client at the end of which the Temporary Worker may be engaged directly by the Client or through another employment business without further charge to the Client.

12. LIMIT OF LIABILITY

12.1 Save for any liability for death or personal injury of the Temporary Worker where this is caused by Stopgap's negligence, Stopgap's total liability to the Contractor for all claims, loss, liability, damages and expenses arising out of or in connection with these Terms shall not exceed £250,000.

12.2 Stopgap shall not be liable to the Contractor for any loss of profit, business or revenue, loss of goodwill, loss of anticipated savings; or any indirect or consequential loss or damage.

13. GENERAL

13.1 A person who is not a party to these has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any Terms but this does not affect:

(a) any right or remedy of a third party which is available apart from that Act; or

(b) any right of the Client to enforce any provision of these Terms against the Contractor.

13.2 Any notice sent under these Terms shall be in writing. Notices may be sent by post, by fax or by e-mail. Correctly addressed notices sent by pre-paid first class post shall be deemed to be received within two days of the date of posting. Correctly addressed faxes shall be deemed to be received on transmission, as evidenced by the transmission report. Correctly addressed e-mails shall be deemed to be received on despatch, as evidenced by hard copy print out.

13.3 The failure of either party at any time to enforce any of these Terms shall not be a waiver of it. If any term is held to be unenforceable in whole or in part, that term shall be deemed not to form part of these Terms but the enforceability of the remainder of these Terms shall not be affected.

13.4 Stopgap is under no obligation to offer contracts or services to the Contractor nor is the Contractor under obligation to accept such contracts or services if offered. The Contractor is not obliged to make its services available except for the performance of its obligations during the Assignment Term. Both parties agree and intend that there be no mutuality of obligations whatsoever.

13.5 These terms are governed by the law of England and Wales and are subject to the exclusive jurisdiction of the Courts of England and Wales.