

Stopgap Terms of Engagement With (Non 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 Temporary Worker is engaged by Stopgap to render services to the Client commencing on the commencement date set out in the Temporary Placement Confirmation Schedule (subject to earlier termination);

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

"Client" means the company set out in the Temporary Placement Confirmation Schedule to whom the Services are provided;

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

"Day Rate" means the rate set out in the Temporary Placement Confirmation Schedule;

"ERA" means the Employment Rights Act 1996;

"Group" means the Client and its subsidiaries and any holding company and the other subsidiaries of that holding company (as those expressions are defined in the Companies Act 2006) together with any associated company (which means any other company in which the Client or its holding company or any subsidiary of the Client or its holding company beneficially holds not less than 20% of the equity share capital).

"Notice Period" means 48 hours or such other period set out in the Temporary Placement Confirmation Schedule;

"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 Temporary Worker to the Client as specified in the Temporary Placement Confirmation Schedule;

"Temporary Placement Confirmation Schedule" means the written Temporary Placement Confirmation Schedule of Stopgap specifying the details of the Services and the terms of such supply by the Temporary Worker;

"Temporary Worker" means the individual listed in the Temporary Placement Confirmation Schedule;

"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.

"WTR" means the Working Time Regulations 1998.

2. THE CONTRACT

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

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

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

3. SERVICES

3.1 The Temporary Worker shall commence the Services on the commencement date specified in each Temporary Placement Confirmation Schedule and continue for the Assignment Term unless and until terminated in accordance with clause 11.

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

- (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 Temporary Placement Confirmation Schedule will create the relationship of agency or partnership or employer and employee between Stopgap and the Temporary Worker or between the Client and the Temporary Worker. The Temporary Worker shall have the status of a worker.

4.2 Stopgap shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Temporary Worker to its Clients.

5. HOURS/DAY RATE

5.1 The Temporary Worker agrees to work such hours as are required by the Client in order to properly perform the Services.

5.2 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 Temporary Worker agrees to work in excess of an average of 48 hours per week if required. If the Temporary Worker wishes to terminate their agreement to opt out of the 48 hour average limit, the Temporary Worker must give Stopgap 1 month's written notice.

5.3 Stopgap shall pay (or the Client shall pay if stated on the Temporary Placement Confirmation Schedule) to the Temporary Worker the Day Rate monthly in arrears in accordance with the days/hours worked in the completed timesheets submitted to Stopgap by the Temporary Worker. The Day Rate shall be subject to deductions in respect of PAYE pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions and any other deductions which Stopgap may be required by law to make. If the Temporary Worker is eligible for an increased Day Rate and/or other additional emoluments part way through an Assignment Term due to the AWR, Stopgap shall provide the Temporary Worker with such entitlements, provided the Temporary Worker has complied with their duties in accordance with clause 8.1.

5.4 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.

5.5 At the end of each week of an Assignment Term the Temporary Worker shall deliver to Stopgap his/her 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. Stopgap must receive such timesheets by no later than 7 days of the end of the period to which the timesheet relates.

5.6 The Temporary Worker 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 Temporary Worker undertakes to Stopgap that the number of hours worked as stated on its timesheet is 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.

5.7 Where the Temporary Worker fails to submit a properly authenticated timesheet Stopgap shall, in a timely fashion, conduct further investigations into the hours claimed by the Temporary Worker and the reasons that the Client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Temporary Worker.

6. STATUTORY LEAVE

6.1 For the purposes of calculating entitlement to paid annual leave pursuant to the WTR under this clause, the leave year commences on 1 January.

6.2 Under the WTR (as amended), the Temporary Worker is entitled to 5.6 weeks paid leave per year, or at the prevailing rate if changed. All entitlement to leave must be taken during the course of the leave year in which it accrues and may not be carried forward to the next year. It is the Temporary Worker's responsibility to ensure that sufficient leave is taken.

6.3 Entitlement to paid leave accrues in proportion to the amount of time worked by the Temporary Worker providing the Services during the leave year.

6.4 Where the Temporary Worker is entitled to additional leave over and above that set out at clause 6.2 as a result of the AWR, the Temporary Worker should ensure that such leave is taken during the leave year. If the Temporary Worker is according to the AWR, entitled to be paid for such leave Stopgap shall ensure the Temporary Worker receives such entitlement.

6.5 None of the provisions of this clause regarding the statutory entitlement to paid leave shall affect the Temporary Workers status as a self-employed worker.

7. LIABILITY

7.1 The Temporary Worker warrants that he/she shall be liable for any loss, damage or injury caused to Stopgap or the Client by any default in the provision of the Services.

7.2 The Temporary Worker 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 its obligations.

7.3 Stopgap may at its option satisfy the warranties and indemnities in these Terms (in whole or in part) by way of deduction from the Day Rate. In addition, the Temporary Worker authorises Stopgap to make any deductions from the Temporary Worker's remuneration arising from any overpayment.

8. TEMPORARY WORKERS OBLIGATIONS

8.1 The Temporary Worker warrants and undertakes that they shall:-

(a) No later than 14 days before the start of the Assignment Term or, where the Temporary Worker has received notice of the Assignment Term of 14 days or less, as soon as reasonably practicable, the Temporary Worker will notify the Contracts Manager of Stopgap in writing of all dates between 1 October 2011 and the start of the Assignment Term, on which the Temporary Worker has rendered services to the Client (or any company in the same Group) to whom the Temporary Worker is about to be supplied. For the avoidance of doubt, the Temporary Worker is required to notify Stopgap even if the location of the Client Site is different to a location at which the Temporary Worker has performed services previously, and even if the Temporary Worker's services were supplied through one or more intermediaries (including but not limited to recruitment agencies, umbrella companies and personal service companies). To the extent that Stopgap requires any further information from the Temporary Worker, the Temporary Worker shall provide it in a timely fashion. Stopgap will act in reliance upon the information that the Temporary Worker supplies and the Temporary Worker must make every effort to ensure that the information supplied is correct, comprehensive and not misleading in anyway;

(b) 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. At all times follow the proper directions and instructions of the Client;

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

- (c) Not to engage in any conduct detrimental to the interests of Stopgap or the Client;
- (d) To be present during the times or for the total number of hours during each day and/or week of the Assignment Term as agreed with Stopgap or the Client;
- (e) 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;
- (f) To comply with all statutory obligations and codes of practice including but not limited to the WTR. The Temporary Worker is required to take rest breaks and rest periods pursuant to the WTR. Where the Temporary Worker is entitled to additional rest breaks and rest periods as a result of the AWR, the Temporary Worker is required to take such entitlement during the Assignment Term;
- (g) To comply with any rules or obligations in force at the Site and other similar instructions given by the Client or Stopgap;
- (h) To furnish Stopgap with any progress reports as may be requested from time to time;
- (i) Not to sub-contract to any third party any of the Services which it is required to perform under any Temporary Placement Confirmation Schedule;
- (j) If, either before or during the course of an Assignment Term, the Temporary Worker becomes aware of any reason why he/she may not be suitable for the Services, s/he shall notify Stopgap without delay;
- (k) inform Stopgap immediately, if part way through the Assignment Term the Client substantially changes the Temporary Worker's role or duties or place of work; and

(l) if the Temporary Worker has any concerns in relation to Stopgap's or the Client's compliance with the AWR, then in the first instance the Temporary Worker is advised to raise those concerns via Stopgap's internal compliance procedure within 7 days of such concern arising. If such concerns remain unresolved the Temporary Worker can make an appropriate formal written request to Stopgap pursuant to Regulation 16(1) of the AWR. Where possible, those concerns will be considered and responded to within 28 days of the initial formal written request.

8.2 The Temporary Worker acknowledges that any breach of the obligations set out in clause 8.1 may cause Stopgap to suffer loss and Stopgap therefore reserves the right to recover such losses from the Temporary Worker.

8.3 In the event that Stopgap and/or the Client are dissatisfied with the Services supplied by the Temporary Worker, 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.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 In consideration of the Day Rate, the Temporary Worker hereby assigns to Stopgap (by way of present assignment of future rights where applicable), or to the Client if so 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 intellectual property rights which may subsist anywhere in the world) and any similar rights (whether in existence now or coming into existence at any time in the future) in any materials, works or productions created, produced or developed by the Temporary Worker (either individually or otherwise) in the performance of the Services.

9.2 The 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.

9.3 The Temporary Worker shall execute any such document or do any thing necessary for the purpose of giving to Stopgap or Client, the full benefit of this clause 9.

10. CONFIDENTIALITY

10.1 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 Temporary Worker agrees as follows:-

- (a) Not at any time whether during or after the Assignment Term (unless expressly so authorised by the Client or Stopgap as a necessary part of the performance of its duties) 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.

11. TERMINATION

11.1 Subject to clause 11.2, a Temporary Placement Confirmation Schedule may be terminated by Stopgap by giving the Temporary Worker the Notice Period.

11.2 Stopgap shall be entitled without notice and without liability to terminate the Temporary Worker's appointment with immediate effect if:

- (a) The Temporary Worker 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 Temporary Worker becomes bankrupt;
- (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.

11.3 If Stopgap terminates the Temporary Placement Confirmation Schedule under clause 11.2 above Stopgap shall be entitled to deduct from any payment owing to the Temporary Worker a sum equal to the costs and expenses incurred by Stopgap as a result of the event entitling it to terminate.

11.4 If the Temporary Worker is unable for any reason to work on a Temporary Placement Confirmation Schedule he/she shall inform Stopgap by no later than 10.00 am on the first day of absence to enable alternative arrangements to be made.

11.5 The Temporary Worker acknowledges that the continuation of a Temporary Placement Confirmation Schedule is subject to and conditioned by 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 Temporary Placement Confirmation Schedule shall cease with immediate effect without liability to Stopgap.

12. RESTRICTION

12.1 If before the Assignment Term commences, during the course of an Assignment Term or within the Relevant Period the Client wishes to employ or engage the Temporary Worker direct or through another employment business, the Temporary Worker acknowledges that Stopgap will be entitled either to charge the Client a fee or to agree an extension of the hiring period (including but not limited to the Assignment Term) 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. In addition, Stopgap will be entitled to charge a fee to the Client if the Client introduces the Temporary Worker to a third party who subsequently engages the Temporary Worker within the Relevant Period.

13. LIMIT OF LIABILITY

13.1 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 Temporary Worker for all claims, loss, liability, damages and expenses arising out of or in connection with these Terms shall not exceed £250,000.

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

14. GENERAL

14.1 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 Temporary Worker.

14.2 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.

14.3 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.

14.4 Stopgap is under no obligation to offer contracts or services to the Temporary Worker nor is the Temporary Worker under obligation to accept such contracts or services if offered. The Temporary Worker 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.

14.5 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.