Contract 3B

Terms of business with a client for the supply of temporary workers (Combined terms) - client is exempt from the off-payroll rules

V4 August 2023

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# When to use this contract

Use this contract when supplying temporary workers:

* to a client which is exempt from the off-payroll rules (see next page) and you engage those temporary workers either:
* Directly on PAYE
* Through an umbrella company, or
* Through a personal services company.

**Do not use these terms if the client is not exempt from the off-payroll rules** (see overleaf). Instead you can use contract 3A when the client is not exempt from those rules. Alternatively, if you only supply PAYE workers (engaged directly by your business) you can use Template Contract 3 .

All our template documents are available in the [REC Template Document Library](https://www.rec.uk.com/legal-resources/model-document-library/model-terms-and-conditions).

Use this contract with the following documents:

|  |  |
| --- | --- |
| **Contracts** | * 4 - Terms of engagement with a PAYE Agency Worker * 4A- Terms with an umbrella company * 4D - Terms with a personal service company (when client is exempt) |
| **Additional Documents** | * Key Information Document (3 templates) * Assignment Details Form (we have different templates for PAYE workers and those working through an intermediary) * Conduct Regulations Opt-out forms CR1 (PSC) and CR2 (Umbrella) * AWR Information Request form G |

The REC has produced these template documents for use by corporate members. These are generic documents for use across a range of sectors so members will need to amend the contracts to suit their own business needs. Unfortunately, the REC Legal Team cannot amend documents for members, or review amendments they have made. However our [legal business partners](https://www.rec.uk.com/recruiters/business-support/member-only-offers-and-discounts?&pageId=981&tag=Legal%20support) can assist members at discounted rates.

How do the new contracts work together?

In the table below we show which new contracts work with each other.

| **Client contracts** | **Temporary worker contracts** | | | |
| --- | --- | --- | --- | --- |
| **PAYE workers** | **Umbrella workers** | **PSC inside IR35** | **PSC outside IR35** |
| **Clients who are exempt from the off-payroll rules** | | | | |
| NEW Contract 3B  (combined terms for the supply of PAYE workers, umbrella company workers and PSCs) | √ | √  Contract 4A  (non-opted out and opted out combined) |  | √  Contract 4D  (opted out only) |
| NEW Contract 3D  (for the supply of PSCs only) |  |  |  | √  Contract 4D  (opted out only) |

In the table above, "opted out" and "non-opted out" refer to the Conduct Regulations which limited company contractors can opt out of provided they do not work with under 18s or vulnerable people.

When to move to the new contracts?

You can use these contracts straight away or you can change over at a time that best suits your business (but no later than 5 April 2021). We will continue to advise on our existing contracts for some time.

When you move to the new contracts will depend on the types of temporary workers you supply, the clients that you have and the tax status decisions they make (when they have to make those decisions).

Clients which are exempt from the off-payroll rules:

You can move to contracts 3B, 3D and 4D when you know that your private sector client will be exempt from the off-payroll rules as of 6 April 2021 (use the [exempt company declaration form](https://www.rec.uk.com/recruiters/legal/template-documents/forms-and-letters/ir35-small-company-exemption-declaration) to ask the client about its status). When the client is exempt, it will not have to make a SDS and you will not have any fee-payer obligations. So to manage things from a practical sense you could move to these contracts any time before 6 April 2021. Again, contractors will appreciate knowing their position, as they will continue to manage the IR35 rules.

## The Conduct Regulations

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) apply by default to these terms of business unless a work seeker opts out of the Conduct Regulations. A work seeker can opt out provided:

1. They work through a limited company such as their own personal service company or an umbrella company; and
2. They do not work with vulnerable people (e.g. in healthcare or education).

You must tell the client about the opt out before the assignment starts– otherwise the opt out will not apply until the next assignment starts. The opt out must be signed by both the individual and the limited company they work through.

**If a valid opt out is given, the Conduct Regulations do not apply either to the terms with the client or with the work seeker.** You must know before an assignment starts, whether the Conduct Regulations will apply to that assignment or not. That is because your obligations to both the client and the work seeker (the individual and the intermediary they work through) will differ depending on whether the Conduct Regulations apply or not. If you know that you will only work with temporary workers who cannot opt out of the Conduct Regulations, you can delete the provisions marked “Where the Conduct Regulations do not apply”.

The Off-Payroll Rules (IR35)

**When to use these terms:**

The off-payroll rules currently apply in the public sector so **do not use this contract if your client is a public authority**.

The off-payroll rules will be extended from the public sector to the private sector from 6 April 2021 and will apply to payments made for work done on or after that date unless the client is exempt (see below). From 6 April 2021, **t**he following organisations will be exempt from the off-payroll rules:

1. Small organisations; and

2. Companies with no UK connection.

**Exempt small organisations:**

A private sector client will be exempt from the off-payroll rules if it meets the definition of small company set out in sections 382 and 383 of the [Companies Act 2006](https://www.legislation.gov.uk/ukpga/2006/46/contents), i.e. it is a company which meets two of the following three criteria[[1]](#footnote-1):

* it has a turnover of not more than £10.2 million per financial year
* it has a balance sheet of not more than £5.1 million per financial year
* it has no more than 50 employees.

Unincorporated organisations will also be exempt from the off-payroll rules if they have a turnover of not more than £10.2 million per year. There are also rules about groups of companies and joint ventures.

The new rules do not require a company that claims to be exempt, to proactively tell their agency suppliers. However, if asked, they must respond within 45 days to confirm whether they are exempt or not. REC template contracts between employment businesses and end user clients include a provision requiring the end user client to inform the employment business whether it is exempt or not. We have also created [an exempt company declaration form](https://www.rec.uk.com/recruiters/legal/template-documents/forms-and-letters/ir35-small-company-exemption-declaration) which you can use to ask the client about their status - **do not try to guess whether your client is small or not**.

For more details on the small companies exemption see HMRC's Employment Status Manual at [ESM 10006 to 10011A](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000).

**Exempt companies with no UK connection:**

A company will also be exempt if it is based wholly overseas, i.e. there is no UK connection immediately before the beginning of the relevant tax year either in the form of being UK resident or having a permanent establishment in the UK. This means having a fixed place of business which includes a branch, an office or a factory. It also includes having an agent that ordinarily operates on behalf of the client or an oil or gas platform within UK waters.

Again, **do not try to guess whether your client is wholly overseas or not**. You can use the exempt company declaration form to ask the client about its status. Note that, unlike the exemption due to size, the legislation does not require the client to respond to any queries about it is exempt because is wholly overseas.

For more details on the overseas companies exemption see HMRC's Employment Status Manual at [ESM 10006 and 10025 to 10026](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000).

This contract also includes a provision requiring the end user to client to notify you if it is no longer exempt and is therefore caught by the off-payroll rules. If your client is not exempt from the off-payroll rules, use Contract 3A, the "Non-exempt company terms of business" available from the [Template Document Library](https://www.rec.uk.com/legal-resources/model-document-library).

Under the 2021 Finance Bill government has introduced a few changes to the Off-pay roll rules which apply to public authorities or medium or large sized clients. These changes take effect from 6th April 2021. For more details, please see the REC [IR35 hub](https://www.rec.uk.com/recruiters/legal/ir35).

# How to use this contract

**Notes:** All notes are at the back of the contract. Delete all “[*see Note X*]” from the text before passing the contract to the client.

**Automatic numbering:** All contracts have automatic numbering. You do not need to amend the numbering in any of the clauses.

**Highlighting:** We have highlighted the places where you need to insert information specific to your business and also where there are optional clauses or notes at the end of the template contract. The notes and insertions are highlighted in grey while the optional clauses are highlighted in blue, yellow and pink. To remove highlighting from your Word document do the following: select the highlighted text, or press CTRL+A to select all of the text in the document; then on the Formatting toolbar, click the arrow next to Highlight tab and then select None and the highlighting will be removed.

**Options in clauses:** Some clauses require you to choose from Option A, Option B or Option C. We have highlighted those options in colour. When you have chosen which option to go for, simply delete the other options (remember also to remove the letter “A”, “B” or “C” from the chosen option).

**Conduct Regulations:** If you only supply temporary workers who have opted out of the Conduct Regulations you can delete all provisions starting with "Where the Conduct Regulations apply".

**Schedule 1:** You need to complete the charge rates for the various types of temporary worker that you supply.

**Schedule 2:** You will need to complete one of the options for the calculation of the transfer fee, with rates specific to your business, and a suitable period of extended hire in Schedule 2. All other options that are not appropriate within the Schedule must be deleted.

**Schedule 3:** You can choose to include templates of the assignment details forms you will use , or you can delete the schedule.

**Heading and copyright notice:** These should be deleted from your document. To do this click on “View”, “Header & Footer”, a separate toolbar opens allowing you to switch between the header and footer. Select wording in the header or footer and press “Delete”. Then click “Close” in the toolbar.

REC template documents have been prepared exclusively for REC Corporate Members. You must not distribute these template documents to third parties except where you require them to complete the document.

# Terms of business for the supply of temporary workers

The Parties

Recitals

1. Definitions and interpretation
2. The Agreement
3. The Client’s obligations
4. Information to be provided by the Employment Business
5. Confirmation of delivery of the Assignment Services
6. Charges
7. Paying a Temporary Resource
8. Transfer Fees
9. Unsuitability of a Temporary Resource
10. Suitability checks and information to be provided in special situations
11. Termination of an Assignment
12. Confidentiality and data protection
13. Intellectual property rights
14. Liability
15. Notices
16. Severability
17. Third party rights
18. Governing law and jurisdiction

Schedule 1 – Charges

Schedule 2 – Transfer Fees

[Optional Schedule 3 – Sample assignment details forms]

### THE PARTIES

1. [Insert your business name] Limited (registered company no. [insert registered company no.]) [trading as [insert trading name if different]] of [address – *see Note 1*] (**“the Employment Business”**). [*see Note 2* if the Employment Business is a limited liability partnership]
2. [Insert Client’s name] Limited (registered company no. [insert registered company no.]) [trading as [insert trading name if different]] of [address – *see Note 1*] to whom the Temporary Resource is Introduced. For the avoidance of doubt the Client shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Temporary Resource is Introduced (**“the Client”**). [*see Note 3*]

### RECITALS

1. The Employment Business carries on the business of sourcing and supplying temporary workers to provide services to its clients. Those temporary workers may be engaged directly by the Employment Business or through Intermediaries. The Client has instructed the Employment Business to supply temporary workers to provide services, as specified in the relevant Assignment Details Form (“the Assignment Services”).
2. The Employment Business will introduce Temporary Resources to the Client to provide the Assignment Services to the Client under the terms this Agreement.

**IT IS AGREED** as follows:

### DEFINITIONS AND INTERPRETATION

### In this Agreement the following definitions apply:

**“Agency Worker”** means (for the purposes of AWR) a Temporary Resource who meets the definition of Agency Worker as set out in Regulation 3 of the AWR; [*see Note 5*]

**“Apprenticeship Levy”** means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay as you Earn) (Amendment) Regulations 2017; [*see Note 4*]

**“Assignment”** means the period of time during which a Temporary Resource is supplied by the Employment Business to the Client;

**“Assignment Details Form****”** means the assignment details set out in writing;

**“Assignment Services”** means the services to be provided or the Specified Deliverables to be delivered by the Temporary Resource;

**“AWR”** means the Agency Workers Regulations 2010 [and/or the Agency Workers (Northern Ireland) Regulations 2011]; [*see Note 5*]

**“AWR Claim”** means any complaint or claim to a tribunal or court made by or on behalf of a Temporary Resource against the Client and/or the Employment Business for any breach of the AWR;

**“Calendar Week”** means (for the purposes of the AWR) any period of seven days starting with the same day as the first day of the First Assignment;

**“Charges”** means the chargesas notified to the Client before an Assignment starts and which may be varied by the Employment Business from time to time during the Assignment. The method of calculating the Charges is set out in Schedule 1 (Charges);

|  |  |
| --- | --- |
| **“Client’s Group”** | means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006; [*see Note 6*] |

[**“Commencement Date”** means [*insert the start date of the exclusivity period]* and all the provisions of this Agreement shall become effective at this date; OPTIONAL DEFINITION: *see Note 7*]

**“Comparable Employee”** means as defined in the AWR; [*see Note 8*]

**“Conditions of Liability”** means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 ITEPA; [*see Note 14*]

**“Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 [and/or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005]; [*see Note 9*]

**“Control”** means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;

**“Data Protection Laws”** means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;[*see Note 10*]

**“Engagement”** means the engagement (including a Temporary Resource’s acceptance of the Client’s offer), the employment or use of a Temporary Resource, by the Client or by any third party to whom the Temporary Resource has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

**[“Exclusivity Period”** means the period during which the Employment Business exclusively supplies its services to the Client in accordance with clause 2.7 starting on the Commencement Date OPTIONAL DEFINITION: [*see Note 7*]

**“Exempt Organisation”** means an organisation which is exempt from the Off-Payroll Rules; [*see Note 11*]

**“First Assignment”** means:

1. the relevant Assignment; or
2. if, prior to the relevant Assignment:
3. an Agency Worker has worked in any assignment in the same role with the relevant Client as the role in which an Agency Worker works in the relevant Assignment; and
   1. the relevant Qualifying Period commenced in any such assignment,

that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);

**“Inside IR35”** means an Assignment which the PSC has determined meets the conditions of Section 61M ITEPA; [*see Note 12*]

**“Intermediary”** means any entity (other than the Employment Business) through which a Temporary Resource provides their services including (and, except where otherwise indicated, includes Intermediary Staff and any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with clause 2.6); [*see Note 13*]

**“Intermediary** **Fees”** means the fees payable to an Intermediary for the provision of the Assignment Services;

**“Intermediary** **Staff”** means any officer, employee, worker or representative of an Intermediary supplied to provide the Assignment Services (and, except where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with clause 2.6);

**“Introduction”** means (i) the passing to the Client of a curriculum vitæ or information which identifies a Temporary Resource or (ii) the Client’s interview of or meeting with a Temporary Resource (in person, by telephone or by any other means), following the Client’s instruction to the Employment Business to supply a temporary worker; or (iii) the supply of a Temporary Resource; which leads to an Engagement of that Temporary Resource; and “Introduces” and “Introduced” shall be construed accordingly;

**“ITEPA”** means the Income Tax (Earnings and Pensions) Act 2003;

**“Losses”** means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including items arising out of or resulting from actions, proceedings, claims and demands;

**“NICs Legislation”** means the Social Security (Categorisation of Earners) Regulations 1978 [the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978]; [*see Note 15*]

**“Off-Payroll Rules”** means Part 2, Chapter 10 ITEPA; [*see Note 16*]

**“Outside IR35”** means an Assignment which the PSC has determined does not meet the conditions of Section 61M ITEPA; [*see Note 17*]

**“Period of Extended Hire”** means (for the purposes of the Conduct Regulations) any additional period that the Client wishes a Temporary Resource to be supplied beyond the duration of the original Assignment or series of Assignments instead of paying a Transfer Fee;

**“PSC”** means an Intermediary in which the Temporary Resource meets the Conditions of Liability, and where relevant includes the Intermediary Staff providing their services through the PSC and any substitute, or assignees or sub-contractors to whom the PSC has assigned or sub-contracted the delivery of the Assignment Services; [*see Note 11*]

**“Qualifying Period”** means (for the purposes of the AWR) 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevantClient in the same role;[*see Note 18*]

**“Relevant Period”** means (for the purposes of the Conduct Regulations) whichever ends the later of (a) the period of eight weeks commencing on the day after the last day on which a Temporary Resource worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which a Temporary Resource worked for the Client having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than six weeks (42 days) since any previous Assignment; [*see Note 19*]

**“Relevant Terms and Conditions”** means (for the purposes of the AWR) terms and conditions relating to:

1. the duration of working time;
2. night work;
3. rest periods;
4. rest breaks; and
5. annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (without limitation) any such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

**“Remuneration”** includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments (taxable and non-taxable) payable to or receivable by a Temporary Resource for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount will be added to the sums paid to the relevant Temporary Resource in order to calculate the Transfer Fee; [*see Note 20*]

**“Safeguarding Legislation”** means the Safeguarding Vulnerable Groups Act 2006 [or the Protecting Vulnerable Groups (Scotland) Act 2007 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007]; [*see Note 21*]

**“Temporary Resource”** meansany temporary worker Introduced or supplied by the Employment Business to provide the Assignment Services to a Client, including an Agency Worker and unless otherwise expressly stated, any officer, employee, worker or representative of an Intermediary;

**“Temporary Work Agency”** means as defined in the AWR; [*see Note 22*]

**“Transfer Fee”** means the fee set out in Schedule 2 and payable in accordance with clause 8; [*see Notes 59 and 60*]

**“Vulnerable Person”** means (for the purposes of the Conduct Regulations) any person who by reason of age, infirmity, illness, disability or any other circumstance needs care or attention, and includes any person under the age of 18;

**“WTR”** means the Working Time Regulations 1998 [and/or the Working Time Regulations (Northern Ireland) 1998]. [*see Note 23*].

* 1. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
  2. The headings contained in this Agreement are for convenience only and do not affect their interpretation.
  3. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

### THE AGREEMENT

* 1. This Agreement together with the Schedule(s) and any applicable Assignment Details Form is the entire agreement between the Employment Business and the Client for the supply of Temporary Resources by the Employment Business to the Client (**“the Agreement”**). This Agreement is deemed to be accepted by the Client by its request for, interview or meeting with, or Engagement of a Temporary Resource or the passing of any information about a Temporary Resource to any third party after an Introduction. [*see Note 24*]
  2. Unless otherwise agreed in writing by [*a director/partner/proprietor*] of the Employment Business, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client. [*see Note 25*]
  3. Subject to clauses 6.2 and 6.4 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between [*a director/partner/proprietor of*]the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which the varied terms shall apply. [*see Notes 25 and 26*]
  4. The Client acknowledges that where a Temporary Resource or substitute or any person to whom the performance of the Assignment Services has been assigned or sub-contracted:
     1. opt out of the Conduct Regulations, none of the Conduct Regulations (except Regulation 13A) will apply to that Assignment; or
     2. do not opt out of the Conduct Regulations, all of the Conduct Regulations will apply to that Assignment. [*see Note 9*]
  5. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 [or in the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981] when Introducing Temporary Resources for Assignments with the Client. [*s*ee *Note 27*]
  6. **THE OFF-PAYROLL RULES:** The Client acknowledges that where a Temporary Resource works through a PSC:
     1. the PSC may supply any of the Intermediary Staff to perform the Assignment Services;
     2. and where a PSC is unable to provide any part of the Assignment Services for whatever reason, the PSC can send a substitute or assign or sub-contract the performance of the Assignment Services

provided that the Employment Business and the Client are reasonably satisfied that the substitute, assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Assignment Services to the required standard and that the terms of any such assignment or sub-contract will contain the same acknowledgements under and obligations imposed by the agreement between the relevant Temporary Resource and the Employment Business. In these circumstances, the Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Assignment Services. [*s*ee *Note 28*]

### EXCLUSIVITY PERIOD(OPTIONAL CLAUSE) [s*ee Note 29*]

* 1. The Client agrees that it will exclusively use the services of the Employment Business for the supply of Temporary Resources for the duration of the Exclusivity Period. The Client agrees that during the Exclusivity Period it will not directly or indirectly source Temporary Resources other than through the Employment Business except in circumstances where the Employment Businesses is unable to supply Temporary Resources and has given its prior written consent to the Client to source temporary workers from a third party [or in the circumstances set out in clause 2.7.1. (OPTIONAL)]
     1. [OPTIONAL] Nothing in this Agreement shall prevent the Client from:
        1. responding to unsolicited approaches from third party employment businesses by referring that employment business to the Employment Business to serve as a sub-contractor or consultant for the Employment Business; and/or
        2. responding to unsolicited approaches from work seekers directly; and/or
        3. directly approaching work seekers using its own resources.
     2. Subject to the provisions for earlier termination set out in clause 2.7.3. the Exclusivity Period shall terminate on [insert date] or by either party giving the other [3 months’ written notice or other such notice as you may require, provided it is reasonable].
     3. The Employment Business may terminate the Exclusivity Period with immediate effect by notice in writing if any of the circumstances set out in clause 11.3.

* + 1. If the Exclusivity Period is terminated by either party, the Client must still pay any fees owed to the Employment Business in accordance with the Agreement, irrespective of whether the fees relate to events occurring before or after the Exclusivity Period.

### THE CLIENT’S OBLIGATIONS [*see Note 30*]

### THE OFF-PAYROLL LEGISLATION [*see Notes 16 and 17*]

* 1. The Client confirms that it is an Exempt Organisation and acknowledges that where a Temporary Resource provides their services through a PSC, the Off-Payroll Rules do not apply. The Client shall respond to the Employment Business's request to confirm the Client's Exempt Status within [7 days] of the date of the request. [*see Note 11*]
  2. The Client undertakes (a) to review its exempt status before the start of each tax year and (b) to tell the Employment Business immediately if it ceases to be an Exempt Organisation. The Client acknowledges that if it ceases to be an Exempt Organisation, the Employment Business must terminate this Agreement (and any Assignments where the services are provided by a PSC) and the parties will contract on terms appropriate to their respective obligations under the Off-Payroll Rules.
  3. The Client acknowledges that under the Off-Payroll Rules a PSC must assess whether an Assignment is Inside IR35 or Outside IR35. If the Client receives a request for information from either the Employment Business or the PSC in relation to an Assignment, the Client will provide a complete and accurate and accurate response about the Assignment.

**OUTSIDE IR35 ASSIGNMENTS:**

* 1. The Client acknowledges that:
     1. the PSC may supply any of the Intermediary Staff to perform the Assignment Services and where the PSC is unable to provide any part of the Assignment Services for whatever reason the PSC shall be entitled to assign or sub-contract the performance of the Assignment Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Assignment Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the PSC and the Employment Business. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Assignment Services; [*see Note 12*]
     2. the PSC shall be permitted to determine how it will provide the Assignment Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Assignment Services, subject to the PSC complying with any reasonable operational requirements of the Client. The PSC can determine the location where it will provide the Assignment Services, but where the Assignment Services are undertaken at the Client’s site, the PSC will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client’s site;
     3. neither the relevant PSC nor the Intermediary Staff, nor any substitute, or assignee or sub-contractor, work under (or subject to the right of) supervision, direction or control of the Client as to the manner in which they provide the Assignment Services. [*see Note 12*]

### THE CONDUCT REGULATIONS

* 1. **WHERE THE CONDUCT REGULATIONS APPLY:** To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
     1. the type of work that the Temporary Resource would be required to do;
     2. the location and hours of work;
     3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Temporary Resource to possess in order to work in the position;
     4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
     5. the date the Client requires the Temporary Resource to start the Assignment; and
     6. the duration or likely duration of the Assignment.
  2. **WHERE THE CONDUCT REGULATIONS APPLY:**The Client undertakes not to request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action. *[See note 32*]
  3. **WHERE THE CONDUCT REGULATIONS APPLY:** The Client undertakes that it knows of no reason why it would be detrimental to the interests of a Temporary Resource for a Temporary Resource to fill the Assignment. [*see Note 32*]

### THE AWR

* 1. The AWR apply where a Temporary Resource is an Agency Worker as defined in the AWR. The provisions in clauses 3.9 to 3.12 inclusive apply when the AWR apply.
  2. The Client will comply with its obligations under Regulations 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of Agency Workers in relation to access to employment) of the AWR. [*see Note 33*]
  3. To enable the Employment Business to comply with its obligations under the AWR, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment and at any time at the Employment Business’s request:
     1. to inform the Employment Business of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Client through any third party and which count or may count towards the Qualifying Period; [*see Note 34*]
     2. if, the relevant Agency Worker has worked in the same or a similar role with the Client via any third party, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business; [*see Note 34*]
     3. to inform the Employment Business if, the relevant Agency Worker has before the start of the relevant Assignment and/or during the relevant Assignment, carried out work which could count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because they have:
        1. completed two or more assignments with the Client;
        2. completed at least one assignment with the Client and one or more earlier assignments with any member of the Client’s Group; and/or
        3. worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role.
     4. [*see Note 35*] except where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
        1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
        2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
        3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
        4. inform the Employment Business in writing of any changes to the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
     5. except where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to give the Employment Business with written details of its pay and benefits structures and appraisal processes and any changes to the same.
  4. [*see Note 36*] In addition, for the purpose of awarding any bonus that the Agency Worker may be entitled under the AWR, the Client will:
     1. include the Agency Worker in its relevant performance appraisal system;
     2. assess the Agency Worker’s performance;
     3. give the Employment Business copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
     4. give the Employment Business all other assistance it may require for the assessment of the Agency Worker’s performance for the purpose of awarding any bonus.
  5. Without prejudice to clauses 14.8 and 14.9, the Client shall inform the Employment Business in writing of any:
     1. oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and
     2. [*see Note 37*] written request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker

as soon as possible but no later than seven calendar days from the day the Client receives any such oral or written complaint. The Client undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client’s receipt of such a request in accordance with Regulation 16 of the AWR and the Client will give the Employment Business a copy of any such written statement.

* 1. The Client will comply with all the Employment Business’s requests for information and any other requirements to enable the Employment Business to comply with the AWR.
  2. The Client warrants that:
     1. all information and documentation supplied to the Employment Business in accordance with this clause 3 is complete, accurate and up-to-date; and
     2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with this clause 3.

### INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS (**WHERE THE CONDUCT REGULATONS APPLY)**

### When Introducing a Temporary Resource to the Client the Employment Business shall inform the Client: [*see Note 38*]

* + 1. of the identity of the Temporary Resource;
    2. that the Temporary Resource has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
    3. that the Temporary Resource is willing to work in the Assignment; and
    4. of the Charges.

### Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, except where the Temporary Resource Worker is Introduced for an Assignment in the same position as one in which the Temporary Resource had previously been supplied within the previous 5 business days and the information has already been given to the Client, unless the Client requests that the information be resubmitted.

### CONFIRMATION OF DELIVERY OF THE ASSIGNMENT SERVICES

* 1. Where the Charges are:
     1. based on time worked by a Temporary Resource, at the end of each [week/month] of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than one [week/month] or is completed or finished before the end of a [week/month]) the Client shall sign the Employment Business's timesheet confirming the number of hours worked by a Temporary Resource worked during the previous [week/ month].
     2. not based on time worked by a Temporary Resource, the Client shall otherwise confirm in writing the delivery of the Assignment Services or the delivery of a Specified Deliverable (as set out in the relevant Assignment Details Form). [*see Note 39*]
  2. The Client agrees that by confirming delivery of the Assignment Services it also agrees that the Assignment Services have been provided satisfactorily, or the Specified Deliverables have been delivered, and in accordance with this Agreement. **The Client acknowledges that even if it does not sign a timesheet or confirm hours worked or services provided, it must still pay the Charges for hours worked or for the Assignment Services delivered.** If the Client:
     1. is dissatisfied with the work performed by a Temporary Resource, or considers that the Specified Deliverables have not been delivered, the provisions of clauses 9 (Unsuitability of a Temporary Resource) and 11.2 (Termination of an Assignment) shall apply;
     2. disputes the time worked by a Temporary Resource, the Client shall co-operate fully and as quickly as possible with the Employment Business to enable the Employment Business to establish what time, if any, were worked by the relevant Temporary Resource.

### CHARGES

* 1. The Charges are calculated as shown in Schedule 1. The Client agrees to pay the Charges. [*see Note 40*] VAT is payable at the applicable rate on the entirety of the Charges. [*see Note 41*]

* 1. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:
     1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Apprenticeship Levy, AWR, ITEPA, the NICs Legislation, and the Pensions Act 2008; or [*see Note 42*]
     2. if there is any variation in the Relevant Terms and Conditions.
  2. The Employment Business will invoice the Client on a [weekly/monthly] basis. The Client will pay the Charges within [specify] days of the date of the invoice.
  3. **WHERE THE AWR APPLY:** In addition to the Charges, the Client will pay the Employment Business an amount equal to any bonus that the Client awards to an Agency Worker in accordance with clause 3.11 immediately following any such award and the Employment Business will pay any such bonus to that Agency Worker. The Client will also pay any employer’s National Insurance Contributions and the Employment Business's commission due on the bonus amount (calculated using the same percentage rate as that used in Schedule 1) in addition to any bonus payable to the Agency Worker. [*see Note 43*]
  4. **Choose from Option A or B and delete the option not used.**[*see Note 44*] The Employment Business reserves the right to charge interest A: under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of A: 8% per annum above the base rate from time to time of the Bank of England B: [specify a rate]% per annum above the base rate from time to time of the [specify your bank]from the due date until the date of payment.
  5. The Client will pay the Charges due under this clause 6 and has no right to set-off, deduct or withhold any sums due.
  6. The Employment Business will not refund any of the Charges. [*see Note 45*]

### PAYING A TEMPORARY RESOURCE

The Employment Business is responsible for paying all Temporary Resources. Where required, the Employment Business is responsible for the deduction and payment of national insurance contributions and PAYE income tax applicable to a Temporary Resource under the requirements of the NICs Legislation and ITEPA. [*see Note 46*]

### TRANSFER FEES [*see Note 47 and 48*]

* 1. The Client shall pay the Employment Business a Transfer Fee where the Employment Business Introduces a Temporary Resource to the Client and the Client either:
     1. Engages the Temporary Resource either directly or through another employment business; or
     2. Introduces the Temporary Resource to a third party and the third party Engages the Temporary Resource other than through the Employment Business either during the Assignment; and
        1. **WHERE THE CONDUCT REGULATIONS DO NOT APPLY:** within a period of [X] months from the termination of the Assignment that the relevant Temporary Resource was supplied into, or if there was no supply, within [X] months of the Introduction of the Temporary Resource by the Employment Business to the Client; or
        2. **WHERE THE CONDUCT REGULATIONS APPLY:** within the Relevant Period, or if there was no supply, within [6] months of the Introduction of the Temporary Resource by the Employment Business to the Client.
  2. The Employment Business will calculate the Transfer Fee as set out in Schedule 2.
  3. **WHERE THE CONDUCT REGULATIONS APPLY:** If the Client wishes to Engage the Temporary Resource other than through the Employment Business, but without liability to pay a Transfer Fee, the Client may, on giving [one week’s *or* *such notice as you require*] written notice to the Employment Business, engage the relevant Temporary Resource for the Period of Extended Hire specified in Schedule 2. [*see Note 48*]
  4. **WHERE THE CONDUCT REGULATIONS APPLY:** During the Period of Extended Hire the Employment Business shall supply a Temporary Resource on the same terms on which it has or would have been supplied during the Assignment and in any case, on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.3 and the Client shall continue to pay the Charges. If the Employment Business is unable to supply a Temporary Resource for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Client does not wish to hire the Temporary Resource on the same terms as the Assignment, but a Temporary Resource is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Temporary Resource before being Engaged by the Client. If the Client does not give the Employment Business notice of its intention to Engage a Temporary Resource other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full. [*see Note 48*]
  5. Where, before the start of the Client’s Engagement of a Temporary Resource other than through the Employment Business, the Employment Business and the Client agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 2 pro-rata. Such reduction is subject to the Client Engaging the Temporary Resource for the agreed fixed term. Should the Client extend the Temporary Resource’s Engagement or re-Engage the Temporary Resource within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
  6. The Employment Business will notrefund the Transfer Fee if the Engagement of the Temporary Resource whether by the Client or a third party to which the Client introduces the Temporary Resource, subsequently terminates or terminates before the end of the fixed term referred to in clause 8.5.
  7. VAT is payable at the applicable rate in addition to any Transfer Fee due.

### UNSUITABILITY OF A TEMPORARY RESOURCE

* 1. The Client undertakes to satisfy itself about a Temporary Resource’s suitability to carry out the relevant Assignment Services. If the Client reasonably considers that the services of a Temporary Resource are unsatisfactory or that the Specified Deliverables have not been delivered, the Client must notify the Employment Business in writing immediately and may terminate the Assignment in accordance with clause 11.2. The Employment Business may in such circumstances and in its absolute discretion, reduce or cancel the Charges for the time worked or the services already delivered by that Temporary Resource, provided that the Client has notified the Employment Business immediately that they have asked the Temporary Resource to leave the Assignment or the Assignment terminates:
     1. within 4 hours of the Temporary Resource commencing the Assignment where the Assignment is for more than seven hours; or
     2. within 2 hours for Assignments of seven hours or less;

and provided that the Client subsequently notifies the Employment Business in writing of the unsuitability of the Temporary Resource (and why) within 48 hours of the termination of the Assignment.

* 1. The Client shall notify the Employment Business immediately [and always within [*specify number of hours*] hours] if a Temporary Resource does not provide the Assignment Services or has notified the Client that they are unable to provide the Assignment Services for any reason.
  2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that a Temporary Resource supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment immediately without prior notice and without liability. The Client will remain liable for all such Charges incurred before the Assignment was terminated. [*see Note 49*]

### INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS *(Optional clause where applicable)* [*see Notes 50 and 51*]

* 1. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Temporary Resource, whether during the course of the Assignment, that Temporary Resource will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or will otherwise work in a position covered by the Safeguarding Legislation.
  2. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Legislation, and to allow the Employment Business to select a suitable Temporary Resource for the relevant Assignment.
  3. If the Client removes a Temporary Resource from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (or equivalent authority) under the Safeguarding Legislation, the Client will give enough information to the Employment Business to allow it to comply with its statutory obligations.

### TERMINATION OF AN ASSIGNMENT

* 1. Any of the Client, the Employment Business or the Temporary Resource may terminate an Assignment at any time without prior notice and without liability except where the relevant Assignment Details Form provides for a specified notice period. Otherwise an Assignment will terminate when the [Client confirms that the] Assignment Services have been completed. However and whenever an Assignment terminates, the Client must pay any Charges due under clause 6 (Charges) above.
  2. Notwithstanding the provisions of clause 11.1, the Client may terminate an Assignment with immediate effect by notice in writing to the Employment Business where:
     1. the relevant Temporary Resource has breached of any statutory or other reasonable rules and regulations applicable to them while providing the Assignment Services; or
     2. the Client reasonably believes that the relevant Temporary Resource has not observed any condition of confidentiality applicable to that Temporary Resource from time to time; or
     3. the Client reasonably considers that a Temporary Resource’s provision of the Assignment Services is unsatisfactory or that the Temporary Resource has not delivered the Specified Deliverables.
  3. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:
     1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, does not remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or
     2. the Client does not pay any amount due to the Employment Business, in full and on the date that the payment falls due; or
     3. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
     4. or an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client, or an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
     5. the Employment Business knows or suspects that the Client is not an Exempt Organisation; or [*See Note 11*]
     6. the Employment Business knows or suspects that the PSC or Intermediary Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Assignment Services, in breach of this Agreement; or [*see Note 52*]
     7. the Client does not give accurate and sufficient evidence that the PSC or Intermediary Staff do not work under (or subject to the right of) supervision, direction or control of any person as to the manner in which it provides the Assignment Services; or [*see Note 52*]
     8. either the Client or the PSC gives the Employment Business a document which fraudulently states that the PSC or Intermediary Staff do not work under (or is not subject to) the supervision, direction or control of any person as to the manner in which they provide the Assignment Services; or [*see Note 52*]
     9. where the Temporary Resource works through a PSC, the Employment Business knows or suspect that the Temporary Resource no longer meets the Conditions of Liability;
     10. the Employment Business knows or suspects that the Client has breached the Data Protection Laws. [*see Note 53*]

### CONFIDENTIALITY AND DATA PROTECTION

* 1. All information relating to a Temporary Resource is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Assignment Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the information at all times.
  2. The Client must keep confidential all information relating to the Employment Business’s business which is capable of being confidential and must not divulge such information to any third party, except information which is in the public domain.

### INTELLECTUAL PROPERTY RIGHTS

### All copyright, trademarks, patents and other intellectual property rights resulting from the provision of any Assignment Services by a Temporary Resource or any third party to whom the Assignment Services are assigned or sub-contracted, shall belong to the Client, except such rights expressly owned or retained by the relevant Temporary Resource or assignee or sub-contractor, and set out in the relevant Assignment Details Form.

### The Employment Business shall use its reasonable endeavours to ensure that a Temporary Resource shall (and any relevant member of an Intermediary shall) execute all such documents and do all such acts in order to give effect to the Client’s rights under to this clause.

### LIABILITY

* 1. Whilst the Employment Business makes reasonable efforts to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from a Temporary Resource and to provide the same in accordance with the Assignment details as provided by the Client, the Employment Business does not accept liability for any Losses made by the Client, arising from the failure to provide a Temporary Resource, for completion of the Assignment, the Assignment Services, or the Specified Deliverables, or from the negligence, dishonesty, misconduct or lack of skill of a Temporary Resource or if a Temporary Resource terminates the Assignment for any reason. The Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
  2. Subject to clause 14.3, unless expressly stated otherwise, Temporary Resources supplied by the Employment Business under this Agreement are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of a Temporary Resource, whether wilful, negligent or otherwise as though the Temporary Resource was on the payroll of the Client.
  3. The Client warrants that neither it nor the Employment Business do (or have the right to) supervise, direct or control a Temporary Resource working through a PSC as to the manner in which they provide the relevant Assignment Services. The Client will notify the Employment Business in writing if it exercises or seeks the right to exercise supervision, direction or control over a Temporary Resource working through a PSC, in which case the Employment Business may terminate the relevant Agreement and/or any Assignments under the Agreement in accordance with clause 11.3. [*see Note 54*]
  4. The Client will also comply in all respects with all statutory provisions as are in force from time to time including, but not limited to the WTR, the Data Protection Laws, Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 [or the Health and Safety at work (Northern Ireland) Order 1978 and the management of Health and Safety at Work (Northern Ireland) Regulations 2000] (as amended), by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client’s own staff (excluding the matters specifically mentioned in clause 7 (Paying a Temporary Resource), including in particular the provision of adequate Employer’s and Public Liability Insurance cover for all Temporary Resources during all Assignments. [*see Note 55*]
  5. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of a Temporary Resource.
  6. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any provisions of ITEPA or the NICs Legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Client.
  7. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business because of any proceedings, claims or demands by a Temporary Resource or any third party arising out of any non-compliance with, and/or due to any breach of the Data Protection Laws by the Client.
  8. The Client shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than seven calendar days from the day on which any such AWR Claim comes to the notice of the Client.
  9. If a Temporary Resource brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Client’s own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

### NOTICES

All notices which must be given under this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, including by email. Any notice shall be deemed to have been served: if by hand when delivered; if by first class post 48 hours following posting; and if by email, when that email is sent.

### SEVERABILITY

If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

### THIRD PARTY RIGHTS

None of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 [Contracts (Rights of Third Parties) Act (Scotland) 2017] is excluded. [*see Note 56*]

### GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of [England & Wales/Scotland/Northern Ireland] and are subject to the exclusive jurisdiction of the Courts of [England & Wales/Scotland/Northern Ireland]. [*see Note 56*]

***Signed for and on behalf of the Employment Business***

[print name here]

***Signed for and on behalf of the Client***

[print name here]

**I confirm I am authorised to sign this Agreement for and on behalf of the Client.**

Date

[*see Note 57*]

# SCHEDULE 1: Charges [*see Note 58*]

The Employment Business calculates the Charges as shown in the table below. The actual charge for the supply of a Temporary Resource is set out in relevant the Assignment Details Form:

|  |  |
| --- | --- |
| For Temporary Resources engaged:  (a) directly by the Employment Business or  (b) through an umbrella company | * the Temporary Resource’s hourly rate of pay * an amount equal to any paid holiday leave to which the Temporary Worker is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during an Assignment * any other amounts to which the Temporary Resource is entitled under the AWR, where applicable * employer’s National Insurance contributions * employers' auto-enrolment pension contributions * any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable * the Employment Business’s commission, which is calculated [as a percentage of the Temporary Resources’ hourly rate] * the Apprenticeship Levy |
| For Temporary Resources providing their services through a PSC | £ Staged payments/on completion  OR  £ Per month/week/day/hour |
| Notional amount to add to remuneration for the purposes of calculating the Transfer Fee (if the Client offers a company car to the individual) |  |
|  | [Any other charges?] |

# SCHEDULE 2: Transfer Fees [*see Notes 59 and 60*]

## **Where the Conduct Regulations apply:**

## Choose either Option A, B or C and delete the options not used

### Option A:

1. The Transfer Fee referred to in clause 8 shall be calculated as follows: [….]% of the Remuneration payable to the Temporary Resource during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by [….]. [*see Note 59*]
2. The Period of Extended Hire, referred to in clause 8, before the Client Engages a Temporary Resource shall be: [….] weeks. [*see Note 60*]

### Option B:

1. The Transfer Fee referred to in clause 8 shall be agreed in writing between the Employment Business and the Client. If the parties do not agree the amount of the Transfer Fee then the Employment Business can charge a fee calculated as follows: [….] % of the Remuneration payable to the Temporary Resource during the first 12 months of the Engagement or that would be payable if the Engagement were to last 12 months, or if the actual amount of the Remuneration is not known, the Charges multiplied by [….]. [*see Note 59*]
2. The Period of Extended Hire, referred to in clause 8 before the Client Engages a Temporary Resource shall be agreed in writing between the Employment Business and the Client. If the parties do not agree the length of the Period of Extended Hire then the period shall be [….] weeks. [*see Note 60*]

### Option C:

1. The Transfer Fee referred to in clause 8 shall be calculated as follows: [….]% of the Remuneration payable to the Temporary Resource during the first 12 months of the Engagement or, that would be payable if the Engagement were to last 12 months, or if the actual amount of the Remuneration is not known, the Charges multiplied by [….] [*see Note 59 and 60*]; less any rebate applicable calculated according to the Scale of Rebate to the Transfer Fee shown below.
2. The Period of Extended Hire, referred to in clause 8, before the Client Engages a Temporary Resource shall be calculated in proportion to the number of weeks the PSC has been supplied to the Client prior to the start of the Period of Extended Hire as set out in the table shown below.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| SCALE OF TRANSFER FEE REBATES | | | | | | | | | | | | | |
| **Number of complete weeks the Temporary Resource has been supplied prior to the Client serving notice under clause 8.2 above.** | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| **Transfer Fee Rebate (as a % of the Fee set out in clause 8 and above)** | 0 | 5 | 7 | 10 | 20 | 30 | 40 | 50 | 60 | 70 | 80 | 90 | 100 |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| PERIOD OF EXTENDED HIRE | | | | | | | | | | | | | | |
| **Number of weeks the Temporary Resource has been supplied to the Client prior to the start of the Period of Extended Hire** | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| **Period of Extended Hire (in weeks)** | 12 | 11 | 10 | 9 | 8 | 7 | 6 | 5 | 4 | 3 | 2 | 1 | 0 |

***Or use the following simplified sliding scales if preferred and delete the scales above***

|  |  |  |
| --- | --- | --- |
| SCALE OF TRANSFER FEE REBATES | | |
| **Number of complete weeks the Temporary Resource has been supplied prior to the Client serving notice under clause 8 above.** | 0 to 12 weeks | 13 weeks or more |
| **Transfer fee rebate (as a % of the fee set out in clause 8 and above)** | 0% | 100% |

|  |  |  |
| --- | --- | --- |
| PERIOD OF EXTENDED HIRE | | |
| **Number of weeks the Temporary Resource has been supplied to the Client prior to the start of the Period of Extended Hire** | 0 to 12 weeks | 13 weeks or more |
| **Period of Extended Hire (in weeks)** | 20 weeks | 0 |

## **Where the Conduct Regulations do not apply:**

Where the Conduct Regulations **do not** apply the Transfer Fee will be calculated [**choose either Option A or B or C and delete the Option not used**]A: in accordance with the scale of fees for permanent introductions set out in Schedule 2. B: at [*specify*]% of the PSC Fees payable to the PSC. Where the amount of the PSC Fees payable to the PSC is not known, the Transfer Fee will be calculated by multiplying the Charges by [*See Note 60*].C: at [*specify*]% of the Remuneration payable to the PSC. Where the amount of the Remuneration payable to the PSC is not known, the Transfer Fee will be calculated by multiplying the Charges by [*See Note 60*].

# [Insert your own transfer fee charges e.g.]

|  |  |
| --- | --- |
| **Remuneration** | **Transfer Fee**  **£ or %** |
| £0-£20,000 | X |
| £20,001-£30,000 | X |
| £30,001-£40,000 | X |
| £40,001-£50,000 | X |
| £50,001+ | X |

# [SCHEDULE 3 – Sample assignment details forms] [*see Note 61*]

This Schedule is optional. Include it if you want to show the client the assignment details form(s) you will use. Otherwise delete this schedule. We have different template assignment details forms in the [REC Template Document Library](https://www.rec.uk.com/legal-resources/model-document-library).

Delete all pages from here before giving the contract to the client

|  |  |  |
| --- | --- | --- |
| Note no. | Section | Explanation |
|  | (Parties) | All companies have a registered company number. Though a company can change its name repeatedly, it cannot change its registered number. So, include the registered company number here to avoid future disagreements about which company provided its services.  Limited companies must have a registered office where all post can be directed to (and where it will be considered received by the company). Companies may also have a trading address which is different to the registered office address. You can state either the registered office or the trading address but if either address changes, the other party must be notified.  If your client is a public authority, it will not have a registered company number or address unless it is a company set up by a public authority such as a NHS Digital (set up by the NHS to manage its IT programmes). |
|  | (Parties) “Employment Business” | If the Employment Business is a Limited Liability Partnership insert the following on page 1.    [Insert your business name] Limited Liability Partnership (registered LLP no. [insert registered company or LLP no.]) [trading as [insert trading name if different]] of [address] (“the Employment Business”). |
|  | (Parties)  “Client” | If the Client is a Limited Liability Partnership insert the following on page 1.    [Insert Client’s name] Limited Liability Partnership (registered LLP no. [insert registered company or LLP no.]) [trading as [insert trading name if different]] of [address] (“the Client”). |
|  | 1 (Definitions)  “Apprenticeship Levy” | The Apprenticeship Levy was introduced in April 2017. All businesses with an annual pay bill greater than £3 million will be required to pay the levy calculated at 0.5% of the pay bill. The pay bill and levy are calculated on a monthly cumulative basis so employment businesses with fluctuating pay bills could find themselves liable to pay the levy sooner than they think. Contractors paid directly by the employment business, including those working on an Inside IR35 assignment, will count towards the business’s pay bill. If they work through an umbrella company their earnings will count towards the umbrella company’s pay bill for apprenticeship levy purposes.  For more detail see the [apprenticeship levy](https://www.rec.uk.com/recruiters/legal/legal-guide/apprenticeship-levy) section of the REC legal guide. |
|  | 1 (Definitions)  “AWR” | The Agency Workers Regulations 2010 have applied in England, Scotland and Wales since 1 October 2011.  The Agency Workers (Northern Ireland) Regulations 2011 have applied in Northern Ireland since 5 December 2011.  Use according to where you operate.  **Is a temporary worker an Agency Worker?**  Temporary workers who are engaged on contracts for services or contracts of employment, whether directly engaged by the employment business or through an umbrella company, will be Agency Workers for the purposes of the AWR. However, it is more complicated when dealing with temporary workers working through their own limited companies.  **Interaction between tax and employment status:**  There is no correlation between inside IR35 status for tax purposes and AWR rights for employment rights purposes. The Government have committed to looking at aligning tax and employment rights but have not done so at the time of publishing this contract. Meanwhile, an individual working through a temporary work agency, which includes a PSC, will be an Agency Worker if they meet the definition of Agency Worker as set out in the AWR. This includes working under the supervision and direction of the client. However, an individual is not an Agency Worker if they are running their own business.  Any individual can claim that they are an Agency Worker for the purposes of AWR. If you are not satisfied that someone is running their own business then you should engage them either directly for PAYE purposes or via another intermediary such as an umbrella company which will employ them. They will have AWR rights under those arrangements. |
|  | 1 (Definitions)  “Client” and “Client’s Group” | It is important to understand which entities may belong to the Client’s Group so that the employment business understands when an Agency Worker has/has not completed the Qualifying Period because they have worked for more than one client.  It should be relatively straightforward in the private sector to know what companies belong to a group.  However, it can be less clear in the public sector.  **Health sector** ‒ a NHS Trust which comprises different hospitals will be one client for the purposes of AWR.  So, time spent in different hospitals within the same trust (i.e. Client’s Group) will all count towards the same qualifying clock.  **Education** ‒ the Client/ Client’s group will be determined by the type of school the Agency Worker is supplied to.  For example, time spent in more than one school within the same local authority will count towards the same qualifying clock. The same applies for academy trusts. For more details on the application of the AWR within education please see [DFE’s AWR 2010: supply teachers guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300838/Agency_Workers_Regulations_-_21_March_RS.pdf). |
|  | 1 (Definitions)  “Commencement Date)  “Exclusivity Period” | Only use these definitions and clause 2.7 if you agree an exclusivity arrangement with the client. If you do not have an exclusivity arrangement, then delete the definitions of both “Commencement Date” and “Exclusivity Period” and clause 2.7 from the contract. |
|  | 1 (Definitions)  “Comparable Employee” | Comparable Employee is defined in Regulation 5(4) of the AWR. They are an employee of the Client who:   * works for and under the supervision of the Client and is engaged in the same or broadly similar work as the Agency Worker having regard to whether the employee and the Agency Worker have a similar level of qualification and skills; and * works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements. |
|  | 1 (Definitions)  “Conduct Regulations”  2.4.2 (The Agreement) | The Conduct of Employment Agencies and Employment Businesses Regulations 2003 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 apply in Northern Ireland.  If supplying in Northern Ireland only delete the reference to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and remove “[and/or]".  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only.  **Opting out of the Conduct Regulations:**  The Conduct Regulations apply by default unless a work seeker opts out of the Conduct Regulations. A work seeker can opt out provided:   1. They work through a limited company such as their own personal service company or an umbrella company. 2. But they must not work with vulnerable people (e.g. in healthcare or education).   They must give the opt out before the start of an assignment otherwise the opt out will not apply until the next assignment starts. The opt out must be signed by both the individual and the limited company they work through.  If a valid opt out is given, the Conduct Regulations do not apply to the terms either with the client or with the work seeker. However, since 6 April 2020 employment businesses must give a Key Information Document to all work seekers before the agree terms with them (Conduct Regulation 13A). There is no opt out from Regulation 13A. See the REC Legal Guide for more information on the [Key Information Document](https://www.rec.uk.com/legal-resources/legal-guide/conduct-regulations/regulation-13a-and-the-key-information-document).  **GLAA sector:** Note the Conduct Regulations do not apply in the GLAA regulated sectors Instead the Gangmasters (Licensing Conditions) Rules 2009 apply. They are very similar to the Conduct Regulations but **there is no opt out from the Gangmasters (Licensing Conditions) Rules 2009**. |
|  | 1 (Definitions)  “Data Protection Laws” | In 2018 both the General Data Protection Regulation and the Data Protection Act 2018 came into effect.  For more detail see the [data protection section](https://www.rec.uk.com/legal-resources/legal-guide/data-protection) of the REC Legal Guide and [our factsheet on the General Data Protection Regulation](https://www.rec.uk.com/recruiters/legal/legal-resources/eu-general-data-protection-regulation-gdpr). |
|  | 1 (Definitions)  “Exempt Organisation”  (The Client’s Obligations – ITEPA)  11.3.5 (Termination) | Public authorities (as defined under the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 ) are already covered by the Off-Payroll Rules. Public authorities cannot be exempt.  From 6 April 2021 the off-payroll rules will apply in both the public and private sectors except where the end user is a:   1. A small company within the meaning of the Companies Act 2006 (i.e. a company which meets two or more of the following criteria (a) annual turnover of not more than £10.2 million, (b) balance sheet total of not more than £5.1 million or (c) no more than 50 employees); or 2. An unincorporated organisation with a turnover of less than £10.2 million per year; or 3. A wholly overseas company.   **Wholly overseas company:**  A company will also be exempt if it is based wholly overseas, i.e. there is no UK connection immediately before the beginning of the relevant tax year either in the form of being UK resident or having a permanent establishment in the UK. This means having a fixed place of business which includes a branch, an office or a factory. It would also include having an agent that ordinarily operates on behalf of the client or an oil or gas platform within UK waters.  For more details on the overseas companies exemption see HMRC's Employment Status Manual at [ESM 10006 and 10025 to 10026](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000).  **Confirmation of exempt status:**  If the employment business asks the client to confirm its size, the client must respond to the employment business within 45 days of the date of the request. The same does not apply to a request for confirmation of status as a wholly overseas company. However we have included a contractual term whereby the client must confirm its exempt status within [7] days of the request - this would include status as a wholly overseas company. You can use our [exempt company declaration form](https://www.rec.uk.com/recruiters/legal/template-documents/forms-and-letters/ir35-small-company-exemption-declaration).  **NOTE:** If an organisation claims to be exempt, but is not, it will be deemed to be the fee-payer and must deduct PAYE and NICs until it confirms it is not exempt.  Where the client organisation is exempt, the off-payroll rules do not apply which means that the PSC is responsible for IR35 and its own tax affairs. However, where the client organisation is not exempt from the off-payroll rules then the client must make a Status Determination Statement i.e. must decide whether an engagement is inside IR35 or outside IR35. You can use contract 3A if the client is not exempt. |
|  | 1 (Definitions)  “Inside IR35”  3.4.1 to 3.4.3 (The Client’s Obligations) | Under this contract the client has no responsibility for IR35 - the PSC must still manage IR35 assessments and deductions if applicable. An assignment will be “Inside IR35” where, if the PSC did not exist, the individual supplied would be deemed to be an employee of the end user client for tax purposes.  Office holder roles are deemed to be Inside IR35 (Section 61M(1)(ii) ITEPA). There is no statutory definition of the word ‘office’. It has been defined in case law as a  ‘permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.’  For more information on office holders see HMRC's [ESM 2500](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2500) |
|  | 1 (Definitions)  “Intermediary” | An intermediary is any third party which a Temporary Resource supplies their services through. It could be an umbrella company, a CIS intermediary (construction sector only), a personal services company or a partnership. |
|  | 1 (Definitions)  "Conditions of Liability" | The employment business must know whether the PSC meets the conditions set out in sections 50 to 53 ITEPA– these are:  (a) the individual has a material interest in the intermediary, or  (b) (i) the payment received is received directly from the intermediary, and (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.  Material interest means:   * Section 51 – in relation to a company, the individual owns, controls or has a beneficial interest in more than 5% the shares; or * Section 52 – in relation to a partnership, s/he is entitled to 60% or more of the profits of the partnership; or * Section 53 – in relation to a sole trader, that payment received is reasonably to be taken as remuneration for services provided by the sole trader to the client.   The text in Section 50(1)(b) ITEPA was introduced by the Finance Act 2020 and is intended to prevent contractors working through contrived arrangements.  One of these conditions of liability must be met to apply the IR35 rules in the first place. |
|  | 1 (Definitions)  “NICs Legislation” | The Social Security (Miscellaneous Amendments No. 2) Regulations 2017 amend the and the Social Security Contributions (Intermediaries) Regulations 2000 and require the deduction of employee’s national insurance contributions when assignment is an Inside IR35 assignment. |
|  | 1 (Definitions)  “Off-Payroll Rules” | The off-payroll rules (aka IR35 or the intermediary’s legislation) apply where an individual provides their services through an intermediary, i.e. they are not on the payroll of the client to whom they provide their services.  The rules are set out in Part 2, Chapter 10 ITEPA.  Chapter 10 applies when the client is not an Exempt Organisation – this means that the client must determine the tax status of the individual providing their services through the intermediary and pass its decision to the party it has a contract with. The fee-payer, i.e. the party which has a contract with the Intermediary, must deduct PAYE tax and NICs, and pay employers’ NICs if the PSC determines that the assignment is “Inside IR35”.  Chapter 8 applies when the client is an Exempt Organisation – this means that the PSC will continue to be responsible for assessing tax status and managing deductions accordingly (as they are now). |
|  | 1 (Definitions)  “Outside IR35” | The assignment will be outside IR35 where, having hypothetically removed the PSC from the supply chain, the individual providing services would not be deemed to an employee of the end user client for tax purposes. When an engagement is outside IR35, the PSC is responsible for its own tax and NICs.  Office holder roles are deemed to be Inside IR35 (Section 61M(1)(ii) ITEPA). There is no statutory definition of the word ‘office’. It has been defined in case law as a  ‘permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.’  For more information on office holders see HMRC's [ESM 2500](https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2500). |
|  | 1 (Definitions)  “Qualifying Period” | **When the AWR apply:**  **General principles:**  Regulation 7 of the AWR provides that an Agency Worker who completes the Qualifying Period will be entitled to the Relevant Terms and Conditions. Regulation 7 provides that an Agency Worker will complete the Qualifying Period when they complete 12 Calendar Weeks on assignment in the same role with the same client.  Regulation 7 also provides for an Agency Worker to take some breaks during an Assignment. The general rule is that breaks of six weeks or less will only pause the qualifying clock. In certain circumstances, breaks of more than six weeks will pause but not stop the clock.  There are also certain provisions regarding a break in an assignment during the protected period for a pregnant Agency Worker.  **Calculating the qualifying clock:**  When calculating whether any weeks completed with the Client count as continuous towards the Qualifying Period, where:   1. the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working; 2. the break is: 3. for any reason and not more than six Calendar Weeks; 4. wholly because the Agency Worker is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Agency Worker has provided such written medical evidence as may reasonably be required; 5. related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work; 6. wholly for taking time off or leave, whether statutory or contractual, to which the Agency Worker is entitled which is:    1. ordinary, compulsory or additional maternity leave;    2. ordinary or additional adoption leave;    3. ordinary or additional paternity leave;    4. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or    5. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above; 7. wholly because the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less; 8. wholly due to a temporary cessation in the client’s requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the client; 9. wholly due to a strike, lock-out or other industrial action at the client’s establishment; or 10. wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and 11. the Agency Worker returns to work in the same role with the client,   any weeks during which the Agency Worker worked for the client before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the client after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(iv)i., ii., or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the client for the original intended duration or likely duration of the relevant assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 in England, Scotland or Wales (or 5 December 2011 in Northern Ireland) does not count for the purposes of the definition of “Qualifying Period”. |
|  | 1 (Definitions)  “Relevant Period” | **When the Conduct Regulations apply:**  The Relevant Period is set by Regulation 10 of the Conduct Regulations (and so cannot be changed even by agreement between the employment business and the client). You can find more information in the [Conduct Regulations](https://www.rec.uk.com/legal-resources/legal-guide/conduct-regulations) section of the REC’s Legal Guide. |
|  | 1 (Definitions) “Remuneration” | You will need a notional amount where a company car is part of the remuneration package to represent the value of the benefit. You could add this to the charges schedule. |
|  | 1 (Definitions)  “Safeguarding Legislation” | **When the Conduct Regulations apply:**  Choose the legislation relevant to the jurisdiction(s) you operate in and delete those not used. |
|  | 1 (Definitions)  “Temporary Work Agency” | **Where the AWR apply:**  A Temporary Work Agency (TWA) is defined in Regulation 4 of the AWR as a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:   1. supplying individuals to work temporarily for and under the supervision and direction of hirers (i.e. clients); or 2. paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.   Notwithstanding paragraph (b) of this definition, a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a “hirer” means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.  So, the employment business is a TWA, as will any umbrella company, PSC, other Intermediary or indeed a master/neutral vendor sitting between the client and the employment business.  All TWAs will be responsible for ensuring an Agency Worker receives their AWR rights. |
|  | 1 (Definitions)  “WTR” | The Working Time Regulations 1998 apply in England, Scotland and Wales. If supplying in England, Scotland and Wales only delete the text in square brackets.  The Working Time (Northern Ireland) Regulations 1998 apply in Northern Ireland. If supplying in Northern Ireland only delete the reference to the Working Time Regulations 1998.  If supplying in all of England, Scotland, Wales and Northern Ireland keep references to both sets of regulations and delete the square brackets only. |
|  | 2.1 (The Agreement) | The Conduct Regulations have been amended several times. This includes the removal of Regulation 17 (Agreeing Terms with Clients). However, the REC decided to keep the requirements of Regulation 17 as a requirement of its [Code of Professional Practice](https://www.rec.uk.com/recruiters/compliance/code-professional-practice) which requires employment businesses to agree terms with clients before providing work-finding services.  REC has retained this requirement for two reasons:   1. It makes commercial sense for both parties to know what the services are, what the cost is, each other’s obligations etc.; and 2. To claim a Transfer Fee you must be able to demonstrate that you have given the client the alternative of taking the Temporary Resource for an extended period of hire, which you cannot prove without terms. |
|  | 2.2 and 2.3 (The Agreement) | We recommend that only one or a small number of staff can change these terms. You should state who has the authority to do so e.g. either director or partner or proprietor, where appropriate. |
|  | 2.3 (The Agreement) | The REC Code of Professional Practice requires members to agree the terms with the client before providing any services to the client. At the latest they must be agreed with the client before they receive the details of any Temporary Resource or Intermediary.  You must ensure that the client accepts your terms and does not substitute their own terms in place of yours. This can happen unintentionally when a client gives you a purchase order specifying conflicting terms after receipt of your terms of business. So, it is always sensible to confirm in writing that your terms will prevail.  If you want to claim a Transfer Fee you must be able to show that the client has accepted these terms. We recommend that you send these terms by registered post, by email using read receipt or by fax and that you keep a record of the fact they were sent with a copy of any confirmation that the email has been read or fax transmitted. Ideally you should get a signature from an authorised person at the client to confirm acceptance of these terms.  If you cannot get a signature, try to get an acknowledgement from the client in an email that they have accepted your terms. If you do not have a signature or such acknowledgement it may be difficult to demonstrate, in the case of a dispute, that the client did accept your terms. |
|  | 2.5 (The Agreement) | This statement is a requirement of the Conduct Regulations - do not delete it. |
|  | 2.6 (The Agreement) | Beware of using sham substitution, assignment or sub-contracting clauses or sham clauses regarding flexibility and autonomy. Such clauses **will not by themselves determine that someone working through a PSC is self-employed and outside IR35 or, not under SDC if the reality is that they are not.** |
|  | 2.7 (Exclusivity Period) | This optional clause sets out the exclusive agreement between the Employment Business and the client which prevents the client from using the services of another employment business to find work seekers. Only use this if you have agreed an exclusive arrangement with your client. |
|  | 3 (The Client Obligations) | The employment business has several obligations under different pieces of legislation including AWR, the Conduct Regulations and ITEPA. It needs certain information from the client to be able to meet those requirements, so we have made it a contractual obligation on the client to provide this information. |
|  | 3.2 (The Client Obligations – ITEPA) | **The Off-Payroll Rules:**  Under this contract the client is exempt from the Off-Payroll Rules. This means PSCs can continue to manage IR35 themselves. But if the client is no longer exempt, then it will have a number of obligations under the Off-Payroll Rules, in particular:   * Where the individual works through a PSC, the client must determine the status of each engagement. The client must take reasonable care when making its status decision. The client must give a status determination statement to the employment business so that it knows whether to deduct tax and NICs, or not.   The client must set up a client-led status disagreement process to help resolve disagreements about the client’s status decision and must respond to enquires within 45 days. |
|  | 3.6 and 3.7 (the Conduct Regulations) | These clauses reflect (a) the prohibition on supplying temporary workers to do the work of striking workers, set out in Regulation 7 of the Conduct Regulation and (b) there would be no detriment to a Temporary Resource if they take a particular assignment. |
|  | 3.9 (AWR – Day One Rights) | **Where the AWR apply:**  From day one of the assignment, an Agency Worker has the right to be treated by the client no less favourably than a comparable employee or worker of the client in relation to: (1) the collective facilities and amenities (e.g. canteen, childcare facilities and transport services) provided by the client (unless the client can justify less favourable treatment on objective grounds) and (2) the right to be informed by the client of any relevant vacant posts with the client, to give the Agency Worker the same opportunity as a comparable employee or worker of the client to find permanent employment with the client. This does not mean however that the Agency Worker is entitled to be employed by the client. The client will be liable for any failure to comply with its Day One obligations. Please see [REC AWR Factsheets 4](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-4-What-is-equal-treatment-August-2015.pdf) and [5](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-5-Liability-for-breach-of-the-AWR-2017-officially-updated.pdf) and the Guidance for more information. |
|  | 3.10.1 and 3.10.2 (The Client’s Obligations – AWR – Information to be provided by Client) | **Where the AWR apply:**  **Qualifying Period:**  An Agency Worker will be entitled to equal treatment in respect of pay and working conditions if they have completed the 12 week qualifying period by working in the same role with the same client for 12 Calendar Weeks (see the definition of “Calendar Week” in clause 1), during one or more assignments (Regulation 7 of the AWR). Certain breaks will only suspend the 12-week qualifying clock whilst others (related to pregnancy, maternity, adoption and paternity leave) will not stop it at all. These are set out in Schedule 1 to this Agreement. Any weeks worked prior to 1 October 2011 (in England, Scotland or Wales) or 5 December 2011 (in Northern Ireland) do not count towards the 12-week qualifying period.  **12 continuous calendar weeks:**  The AWR provide that the Agency Worker achieves the qualifying period by working ‘in the same role for the same client for 12 continuous calendar weeks during one or more assignments.’  The AWR say that ‘any week during the whole or part of which an Agency Worker works is counted as a calendar week.’  The AWR do not define ‘week’ nor do they specify that for example, a week commences on a Monday or Sunday etc. We have taken the view, based on the available guidance that the week is a seven-day period which begins with the start day of the Agency Worker’s assignment.  However, it is clear that the qualifying period for the Agency Worker is tied to the time that the Agency Worker is supplied to the particular client rather than through the particular employment business that the Agency Worker works through.  **Same role:**  An Agency Worker works “in the same role” unless: (a) the Agency Worker has started a new role with the same client, whether supplied by the same or a different temporary work agency; (b) the work or duties that make up the whole or the main part of that new role are substantively different from the work or duties that made up the whole or the main part of the previous role; and (c) the temporary work agency has informed the Agency Worker in writing of the type of work the Agency Worker will be required to do in the new role (Regulation 7(3) of the AWR).  The Agency Worker must work in the same role for the same client for 12 weeks to complete the Qualifying Period, but this could be through one or more temporary work agencies. The employment business therefore needs to know whether the relevant Agency Worker has worked in the same role with the client via any third party so that the employment business can assess whether the Agency Worker has already acquired qualifying weeks or has already completed the 12-week qualifying period.  Subject to breaks taken the earliest date an Agency Worker could qualify for equal treatment was 24 December 2011 in England, Scotland and Wales or 27 February 2012 in Northern Ireland.  Please see [REC AWR Factsheet 3](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-3-How-does-an-agency-worker-qualify-for-equal-treatment-2015.pdf) for more information.  Anti-avoidance measures:  The AWR contain anti-avoidance measures (Regulation 9) to prevent temporary work agencies or their clients (i.e. the Client) structuring assignments in such a way to prevent an Agency Worker from acquiring the 12-week qualifying period for equal pay and working conditions. The Employment Business must have the information set out in clauses 3.10.1 to 3.10.3 so that it can assess whether previous assignments with the client have been structured in such a way as to try to avoid the application of the AWR and so the Agency Worker will be deemed to have completed the Qualifying Period.  Please see [REC AWR Factsheet 5](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-5-Liability-for-breach-of-the-AWR-2017-officially-updated.pdf) for more information on the anti-avoidance measures. |
|  | 3.10.4 (The Client’s obligations – AWR – Information to be provided by Client) | Under the AWR, on completion of the 12-week qualifying period, an Agency Worker is entitled to equal treatment in respect of pay and working conditions i.e. the Relevant Terms and Conditions. In most cases, equal treatment can be established by giving the Agency Worker the same Relevant Terms and Conditions as if they had been recruited directly by the client as an employee or worker to the same job. However, the client will be deemed to have complied with the AWR in this respect if the client identifies an appropriate comparator, who must be an employee, and treats the Agency Worker in the same way (see the definition of “Comparable Employee” in Schedule 1).  Please see [REC AWR Factsheet 4](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-4-What-is-equal-treatment-August-2015.pdf) for more information.  Please also see the [Information Request Form](https://www.rec.uk.com/recruiters/legal/template-documents/supporting-documents/document-g-information-request-form) which you can use to get the necessary information from the Client. |
|  | 3.11 (The Client’s obligations – AWR - Bonuses and performance appraisal systems) | An Agency Worker may be entitled to a bonus under the AWR. The AWR do not require clients to assess Agency Workers for the purpose of awarding a bonus that the Agency Worker may be entitled or to integrate Agency Workers into their performance appraisal systems. However, we recommend that clients conduct an appraisal because they are in a better position than the employment business to do this, hence the inclusion of this clause. If the client incudes the Agency Worker in its performance appraisal system, this should not of itself affect the Agency Worker’s employment status. For more information on bonuses and the integration of Agency Workers into clients’ appraisal systems, please see the Guidance.  Please also see the REC template [Information Request Form](https://www.rec.uk.com/recruiters/legal/template-documents/supporting-documents/document-g-information-request-form) which you can use to obtain the necessary information from the client. |
|  | 3.12.2 (The Client Obligations – AWR – written requests for information) | If the Agency Worker considers that they have not received equal treatment they can make a written request to you for a written statement containing information relating to that treatment. If the Agency Worker does not receive the written statement from you within 30 days of making the request, the Agency Worker can make the same request to the client. For more information, please see [REC AWR Factsheet 5](https://www.rec.uk.com/legal-resources/factsheets-and-guides/factsheets-and-guides/Factsheet-5-Liability-for-breach-of-the-AWR-2017-officially-updated.pdf). |
|  | 4.1 (Information to be provided by the Employment Business) | Where the Conduct Regulations apply, for each individual assignment you must confirm the information required by Conduct Regulation 21 – you can use the sample Assignment Details Form in the Template Document Library. Even where the Conduct Regulations do not apply, we recommend that you provide the details shown in those forms. |
|  | 5.1.2 (Confirmation of delivery of the Assignment Services) | To charge the client, you need to know what hours have been worked or what services have been provided. This clause requires the client to sign a timesheet, or where this is not appropriate (e.g. because work is being delivered in stages and can only be invoiced on completion of each stage) to confirm what work has been done and can be charged for. |
|  | 6.1 (Charges) | You must agree the Charges (staged payments and/or a completion fee or, alternatively, a monthly, weekly or daily rate (preferably not hourly)) with the client before the start of an assignment and should be confirmed in writing – this can be done in the assignment details form. |
|  | 6.1 (Charges – VAT) | **HMRC guidance**: VAT is chargeable on all supplies of staff and on the whole of your charge unless you are not registered for VAT (in rare cases where your turnover is below the current VAT threshold) or where the supply is exempt or a concession exists. Those circumstances are limited to supplies involving nurses or healthcare or welfare services. For further information, see HMRC’s Notices 700/34 (Staff) and 701/57 (Health Professionals) and Business Brief 12/10 at [www.hmrc.gov.uk](http://www.hmrc.gov.uk) or call the National Advice Service Helpline on 0300 200 3700.  For further information please see the [VAT](https://www.rec.uk.com/legal-resources/legal-guide/VAT) section of the Legal Guide.  **Before agreeing to a client’s request not to charge VAT or making your own decision not to charge VAT, you should take professional tax advice. Do not rely on advice given to you by the client or their professional advisors.** |
|  | Clause 6.2.1  (Charges – variation) | Under the AWR, you must comply with the equal treatment provisions in respect of pay\* and working conditions if the Agency Worker has completed the 12-week qualifying period. **However, there is no obligation under the AWR for the client to compensate you for any resulting increase in the cost of engaging the Agency Worker. This will be down to commercial negotiation between you and the client.** So, we have included a provision which allows you to increase the Charges to meet its AWR (and other) obligations.  \*For the purposes of the AWR, pay includes basic pay, bonus, commission, holiday pay, and other payments not listed in Regulation 6(2) but which include overtime, shift premia, unsocial hours premia and hazardous work payments. |
|  | 6.4 (Charges – Bonus payment) | Note the obligation on the client to pay you an amount equal to any bonus that the client awards to the Agency Worker and for you to then pay the bonus to the Agency Worker. This is a contractual obligation and not one imposed by the AWR.  This clause allows you to charge commission on any bonus payable to the Agency Worker. It will be for the client to negotiate this out. Remember to charge and deduct the relevant national insurance contributions on any bonus. VAT will also be payable.  Please see REC [AWR Factsheet 5](https://www.rec.uk.com/legal-resources/factsheets-and-guides#285387) for information on bonuses. |
|  | 6.5 (Charges – interest on late payments) | All businesses can choose to claim interest at the statutory rate or at a rate tied to the rate charged by their own bank. Choose either Option A or Option B and delete the option not used.  If choosing Option B, you should specify a rate not greater than 8% above the Bank of England base rate. |
|  | 6.7 (Charges – refund) | Please see Note 25. Conduct Regulation 17 required that the employment business state whether refunds are available. Though Conduct Regulation 17 has been repealed, REC has kept this as a requirement of the REC Code of Professional Practices so do not delete this statement (but amend it if you give refunds and set out how and when you will give refunds). |
|  | 7 (Paying the Temporary Resource) | The employment business's obligations to deduct tax and NICs and pay employers' NIC will differ depending on how the temporary worker is engaged.  **Paying a temporary worker engaged directly the Employment Business**  Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 require employment businesses to deduct PAYE tax from all individual temporary workers who work under the supervision, direction or control of the client as if they were the client’s own employees. Social security legislation requires the deduction of national insurance and the payment of employers’ national insurance. This does not mean that the temporary worker is an employee or that they have the same employment rights as employees, but they will be a worker for the purposes of NMW, holiday pay and other statutory rights. Further information on all of these can be found in the REC’s Legal Guide at [www.rec.uk.com/legal](http://www.rec.uk.com/legal).  **Paying an intermediary such as an umbrella company or a PSC**  You must pay the Intermediary you engage with. However, depending on the type of intermediary, different rules around deductions for tax and national insurance apply:   * An umbrella company – a temporary worker working through an umbrella company will not have a material interest in the company (see Note 12) therefore you do not have to think about IR35. The umbrella company should deduct tax and NICs which means that the employment business can pay the umbrella company gross. However, the employment business must know that the umbrella company will and is deducting tax and NICs and is not in fact, engaging the individual through a PSC in which case you would have to consider the off-payroll rules. * A Construction Industry Scheme (CIS) intermediary - these operate in the same position in the recruitment supply chain as umbrella companies. They operate in the construction sector only. The CIS rules are complex but in summary, the CIS intermediary will apply whatever level of deductions HMRC tell it to. But, the off-payroll rules take precedence over CIS and so must be considered first. For more information on CIS see the REC guide '[Running an agency In the construction sector](https://www.rec.uk.com/recruiters/legal/legal-resources/sector-specific-guides-and-briefings/rec-guide-running-agency-construction-sector)' and HMRC's [CIS 340](https://www.gov.uk/government/publications/construction-industry-scheme-cis-340). Please note that **REC contracts have not been written to comply with the CIS rules**. * A personal services company – under this contract the client is exempt from the Off-Payroll Rules. This means the PSC continues to manage IR35.   The appropriate provisions re payment and deductions are in the contracts with the umbrella company or the personal services company. |
|  | 8 and Schedule 2  (Transfer Fees) | The REC cannot advise you on what transfer fees to charge or for what period. However, we recommend that the period here should not exceed six months. |
|  | 8.3 and 8.4 (Transfer Fees) | **When the Conduct Regulations apply:**  The purpose of the Transfer Fee and the Period of Extended Hire is to compensate you for any loss you may suffer if the client takes on any of your temporary workers. Clause 8 and all its sub-clauses are designed to ensure that your transfer fees comply with Regulation 10 of the Conduct Regulations while protecting your right to claim a fee in various circumstances.  To recover a Transfer Fee under clause 8 you must stipulate the amount of the fee and the length of the extended hire period that will apply in the event of an engagement. You must select one of three options available in Schedule 2 to this contract and fill in the blanks as appropriate*. (*see also Notes 61 and 62).  Choose Option A in Schedule 2 if you use a fixed Transfer Fee e.g. 10% of the Remuneration or 10 times the weekly Charges, and a fixed Period of Extended Hire, e.g. six weeks.  Choose Option B in Schedule 2 if you would like flexibility to negotiate the Transfer Fee and Period of Extended Hire with different Clients.  Choose Option C in Schedule 2 if you charge a Transfer Fee or conduct a Period of Extended Hire according to a sliding scale of weeks supplied.  Whilst there is no statutory obligation on transfer fees to be reasonable, a transfer fee should not be set so high that it could be regarded as a penalty and would therefore be unenforceable. (see also Notes 61 and 62)  See the alternative transfer fee arrangements where the Conduct Regulations do not apply. |
|  | 9.3 (Unsuitability of a Temporary Resource) | This reflects the requirements of Regulation 20 of the Conduct Regulations. |
|  | 10 (Information to be provided in special situations) | If you supply temporary workers to work with vulnerable people you will have certain obligations under the Safeguarding Legislation. So, we have included these provisions to require the client to help you comply with those obligations. You can delete it if you do not recruit for such roles but we recommend that you keep the clause in case such situations arise. |
|  | 10 (Information to be provided in special situations) | Employment businesses and employment agencies must refer certain information to the Disclosure and Barring Service about individuals who are removed from regulated activity positions (certain work with children or vulnerable adults) for safeguarding reasons. See the [DBS](https://www.rec.uk.com/legal-resources/legal-guide/DBS) section of the REC legal guide. |
|  | 11.3.6 to 11.3.8 (Termination) | Members should take steps to ensure the PSC is compliant with Chapter 8 ITEPA (re: IR35) and accounting for PAYE and NIC as the contract in operation is inside IR35. Those working under PAYE or through PSCs cannot benefit from travel and subsistence relief when operating inside IR35.  Finally, liability may also transfer to the Employment Business if it is involved in “arrangements” which are designed to avoid the application of Section 339A. This could include mass migrating temps from umbrella companies to PSCs. |
|  | 11.3.9 (Term and Termination – data protection) | The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 came into effect in May 2018 and build upon existing data protection law to reflect technological change and the level and types of personal data collected by organisations. Organisations must have a legal reason for processing personal data.  Article 82 of the GDPR provides that an individual who suffers damage because of a breach of the GDPR is entitled to compensation from the party that committed that breach. Where there is more than one data controller or processor each will be held liable for the entire damage to ensure that the individual receives appropriate compensation.  Where the client breaches the Data Protection Laws, the employment business will want to limit any further liability and so may wish to terminate the contract.  We have included the indemnity from the client to the employment business to protect the Employment Business against any losses it incurs because of the client’s breach of the Data Protection Laws. Clients may push back but the indemnity is limited to losses incurred because of *their* breach of the GDPR and not any breach. We have not included a reciprocal indemnity from you to the client, but clients may request this from you. If you do agree to give such an indemnity, again limit it to any losses because of *your* breach of GDPR and do not indemnify the client for their own breaches. Please check with your insurer before you give any indemnities. |
|  | 14.3 (Liability) | In reality, clients are unlikely to give such notification. However, if the client (or any other person) supervises, directs or controls the PSC (or seeks the right to) you might become liable to deduct PAYE and NICs if the other criteria set out in the guidance notes are met. If the client provides fraudulent documentation as to supervision, direction and control it will become liable for any PAYE or NICs due (sections 44(4)(a) and 44(5) ITEPA). |
|  | 14.4  (Liability – health and safety) | Please refer to [REC AWR Factsheet 6](https://www.rec.uk.com/recruiters/legal/legal-resources/agency-workers-regulation/maternity-rights-under-awr) for information on the rights under the AWR of pregnant Agency Workers and those who are new mothers or who are breastfeeding after they have completed the 12-week qualifying period. These rights include paid time off to attend ante-natal medical appointments and ante-natal classes; the right to be offered suitable alternative work (paid at the same rate as the original assignment) by you if the hirer cannot make reasonable adjustments and the Agency Worker cannot complete the original assignment for health and safety reasons; and the right to be paid by you for the remaining duration of the original assignment if you cannot find suitable alternative work.  Note the potential financial impact on your business if an Agency Worker cannot complete an assignment for health and safety reasons and you cannot find suitable alternative work for the Agency Worker. The REC considered including a clause under which the hirer has to pay you for the remaining duration of the original assignment in these circumstances (so that you can pay the Agency Worker), but concluded that hirers are unlikely to agree to such a clause. However, the REC recommends that you consider trying to negotiate this kind of clause into the contract.  **Please be aware of, and do not accept, any potentially discriminatory instructions from hirers re the supply of female workers or pregnant Agency Workers. Such instructions could leave you open to sex, pregnancy and maternity discrimination claims under existing anti-discrimination legislation.** |
|  | 17 (Third party rights) and 18 (Governing Law) | The Contracts (Rights of Third Parties) Act 1999 applies in England, Wales and Northern Ireland.  The Contracts (Rights of Third Parties) Act (Scotland) 2017 applies In Scotland only.  In clauses 17 and 18 delete as appropriate to your main jurisdiction. |
|  | Signature clause | The REC Code of Professional Practice requires members to agree terms with clients before you provide services to them. We recommend that you send this Agreement by email (using "read receipt" or by registered post). Keep a record of what you send, with a copy of any confirmation that the email has been read or terms received. if you do not get such confirmation, call the client to confirm they received them and agree the terms. Encourage them to come back to you by email or in writing – keep a note of the person you spoke with including the date and time of the conversation.  Proof that a client has received and agreed terms is important for several reasons, not least the requirement of the Conduct Regulations that you agree terms before providing work-finding services. For example, to claim a Transfer Fee you must be able to show that the client has accepted this Agreement and that your agency is the effective cause of the Engagement.  A signature from someone employed by the client who can agree to your terms is evidence of the fact that the client has received and agreed them. It is also important that the individual signing the Agreement on behalf of the client has the authority to do so on behalf of the client. |
|  | Schedule 1: Charges | You must complete this for each client. Ensure that you include all charges you will make, for all types of resources – PAYE, PSC, umbrella. |
|  | Schedule 2: Transfer Fees | The purpose of the Transfer Fee and the Period of Extended Hire is to compensate you for any loss you may suffer because of the Engagement of a Temporary Resource by the client other than through you. The loss may be your permanent introduction fee; or it may be your margin charged over the length of a typical assignment, or the margin fees that would have been charged over the balance of the assignment where the client brings it to an end earlier than agreed in order to directly engage a Temporary Resource. For example, if a Temporary Resource is engaged directly by the client for a fixed period of a few weeks, the loss of business would be the margin you would have charged the client over that period. In those circumstances it may be excessive to charge your full permanent introduction fee based on 12 months’ salary. But if the Engagement is on a permanent basis then this may be more acceptable. The REC Legal Team cannot confirm what would be a reasonable fee but excessive transfer fees may be deemed to be a penalty and thus unenforceable.  You should insert a figure which when multiplied by the relevant charge rate results in a reasonable fee to compensate you for the loss of your ability to earn your margin.  If the engagement is on a permanent basis then it may be reasonable to charge a fee which would be equal to your permanent introduction fee. But if the engagement is on a temporary basis then it may only be reasonable to charge the pro rata fee for that period. |
|  | Schedule 2: Transfer Fees | Clause 8 is drafted to ensure that your Transfer Fees comply with Regulation 10 of the Conduct Regulations while protecting your right to claim a fee in various circumstances.  To recover a Transfer Fee under clause 8 you must stipulate the amount of the fee and the length of the extended hire period that will apply in the event of an engagement. You will need to select one of the three options available in this Schedule and fill in the blanks as appropriate*.*  Choose Option A if you use a fixed Transfer Fee e.g. 10% of the Remuneration or 10 times the weekly Charges, and a fixed Period of Extended Hire, e.g. six weeks. OR  Choose Option B if you want flexibility to negotiate the Transfer Fee and Period of Extended Hire with different Clients. OR  Choose Option C if you charge a Transfer Fee or conduct a Period of Extended Hire according to a sliding scale of weeks supplied.  The Period of Extended Hire can be any length but must be reasonable and should be long enough to compensate you for the loss of the margin earned from the services of that Temporary Worker or the loss of an introduction fee.  See the alternative transfer fee arrangements where the Conduct Regulations do not apply. |
|  | Schedule: Sample Assignment Details Form | The REC has prepared different assignment details forms for different types of supply. You can amend these to suit your business needs (provided you meet the relevant legal requirements). |

1. The criteria for a small company are based on **financial year**/filing period OR **calendar** year if unincorporated. But the rules will apply from the relevant **tax** year after they stop being small, i.e. For unincorporated companies: clients must apply the rules from the start of the **tax year** following the end of the **calendar year** when they met the conditions.

   For incorporated companies: if the company meets the conditions for two consecutive years, clients must apply the rules from the start of the **tax year** following the **end of the filing period for the second financial year** when they met the conditions. [↑](#footnote-ref-1)