

## CONTRACT FOR SERVICES FOR AGENCY WORKERS (DECEMBER 2015)

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. In these Terms the following definitions apply:

**"Agreed Rate of Pay"** means the rate of pay which will be paid for each hour or day worked during an Assignment prior to completion of the Qualifying Period, subject to Deductions and Agreed Deductions;

**"Agency Worker"** means the individual supplied by OHUK to provide services to the Client;

**"Agreed Deductions"** means an amount in respect of (i) any prior overpayment made to the Agency Worker (ii) the replacement or repair cost of any OHUK or Client property which is lost, damaged or not returned by the Agency Worker in accordance with these Terms and (iii) any other deduction which the Agency Worker agrees can be made from their remuneration from time to time;

**"Assignment"** means the period in which the Agency Worker is supplied by OHUK to work under the supervision, direction and control of the Client;

**"Assignment Schedule"** means written confirmation of the assignment details to be given to the Agency Worker upon acceptance of the Assignment;

**"AWR"** means the Agency Workers Regulations 2010;

**"Client"** means the person, firm or corporate body (together with any subsidiary or associated person, firm or corporate body) to whom the Agency Worker is supplied or introduced;

**"Conduct Regulations"** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**"Confidential Information"** means all commercial, financial, marketing, technical or other information, knowhow or data of whatever nature relating to the Client or OHUK and their business or affairs, in any form or medium whatsoever, which is provided to the Agency Worker or which the Agency Worker becomes aware of during an Assignment;

**"Data Protection Laws"** means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

**"Deductions"** means any deductions which OHUK may be required by law to make and in particular in respect of PAYE pursuant to Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 and Class 1 National Insurance Contributions;

**"Emoluments"** means any remuneration in addition to the Qualifying Rate of Pay;

**"Engagement"** means the engagement, employment or use of the Agency Worker by the Client or any third party to whom the Agency Worker has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services, or through a company of which the Agency Worker is an officer, employee or other representative, an agency, license, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

**"Intellectual Property"** means all copyright, trade marks, patents, design rights and other intellectual property rights arising anywhere in the world, whether registrable or not, together with any registration rights in respect of the same;

**"Leave Year"** means the period during which the Agency Worker accrues and may take statutory leave commencing on the date that the Agency Worker starts an Assignment or a series of Assignments and running until the anniversary of that date;

**"OHUK"** means OHUK Limited, a company incorporated in England and Wales under company number 05280148 and whose registered office is at TMS House, Cray Avenue, Orpington, Kent, BR5 3QB;

**"Period of Extended Hire"** means any additional period that the Client wishes the Agency Worker to be supplied for beyond the duration of the original Assignment or series of assignments as an alternative to paying a Transfer Fee;

**"Qualifying Period"** means 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 Client to work temporarily for and under the supervision and direction of the Client in the same role;

**"Qualifying Rate of Pay"** means the rate of pay which will be paid to the Agency Worker upon completion of the Qualifying Period, subject to Deductions and any Agreed Deductions, as set out in any variation to the Assignment Schedule;

**"Rail Assignment"** means an assignment within the rail industry for which the Agency Worker is sponsored or sub-sponsored by OHUK;

**"Relevant Period"** means (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Client having been supplied by OHUK; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Client having been supplied by OHUK or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

**"Terms"** means these terms of engagement together with the Assignment Schedule and, if applicable, any sponsorship agreement between OHUK and the Agency Worker;

**"Transfer Fee"** means the fee payable by the Client to OHUK in accordance with clause 3.5, as permitted by Regulation 10 of the Conduct Regulations;

**"Type of Work"** means the role specified by the Agency Worker on their OHUK registration form or such other role as may be acceptable to the Agency Worker; and

“WTR” means the Working Time Regulations 1998.

- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings in these Terms are for convenience only and do not affect their interpretation.
- 1.4. 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 these Terms) and all subordinate legislation made from time to time.

## **2. THE CONTRACT**

- 2.1. These Terms constitute a Contract for Services between OHUK and the Agency Worker for the supply of services to the Client and they shall apply to all Assignments undertaken by the Agency Worker through OHUK, subject to any replacement or variation to these Terms which may be made by OHUK from time to time in accordance with clause 2.4.
- 2.2. These Terms represent the entire agreement between OHUK and the Agency Worker and shall prevail over any other terms put forward by the Agency Worker.
- 2.3. These Terms shall not give rise to a contract of employment between OHUK and the Agency Worker and there is no intention for any mutuality of obligation to exist between the parties at any time. The Agency Worker is supplied as a worker, and is entitled to certain statutory rights, but nothing in these Terms shall be construed as giving the Agency Worker any employment rights or rights in addition to those provided by statute except where expressly stated.
- 2.4. No variation or alteration to these Terms shall be valid if made during the course of an Assignment unless the details of such variation are agreed between OHUK and the Agency Worker and set out in writing and a copy of the varied terms is given to the Agency Worker no later than 5 business days following the day on which the variation was made stating the date on or after which such varied terms shall apply.
- 2.5. For the purposes of the Conduct Regulations, OHUK shall act as an Employment Business.

## **3. ASSIGNMENTS**

- 3.1. OHUK will endeavour to obtain Assignments for the Agency Worker to carry out the Type of Work but OHUK shall be under no obligation to do so and the Agency Worker shall be under no obligation to accept any Assignment offered by OHUK.
- 3.2. The Agency Worker acknowledges that there may be periods when no suitable work is available and agrees that:
  - 3.2.1. the decision as to whether to offer any particular Assignment to the Agency Worker shall be determined solely by OHUK;
  - 3.2.2. OHUK shall incur no liability to the Agency Worker should OHUK fail to offer any Assignments to the Agency Worker; and
  - 3.2.3. the Agency Worker is entitled to register with and accept assignments with any other employment business provided that the Agency Worker does not breach these Terms by doing so.
- 3.3. At the same time as an Assignment is offered to the Agency Worker OHUK shall provide the Agency Worker with an Assignment Schedule confirming the specific details of the Assignment together with the information specified in the Conduct Regulations.
- 3.4. For the purpose of calculating the average number of weekly hours worked by the Agency Worker on an Assignment for the purposes of the WTR, the start date for the averaging period shall be the date on which the Agency Worker commences the first Assignment.
- 3.5. If, before or during an Assignment or during the Relevant Period, the Client wishes to Engage the Agency Worker directly or through another employment business, the Agency Worker acknowledges that OHUK will be entitled either to charge the Client a Transfer Fee or to agree a Period of Extended Hire with the Client at the end of which the Agency Worker may be Engaged directly by the Client or through another employment business without further charge to the Client.

## **4. AGENCY WORKER'S OBLIGATIONS & WARRANTIES**

- 4.1. If the Agency Worker commences an Assignment, the Agency Worker must:
  - 4.1.1. Notify OHUK if the Agency Worker has worked for the same Client within the prior six month period;
  - 4.1.2. co-operate with the Client's reasonable instructions and accept the direction, supervision and control of any responsible person in the Client's organisation;
  - 4.1.3. observe any rules and regulations of the Client's establishment (including the hours of work) to which the Agency Worker's attention has been drawn or which the Agency Worker might reasonably be expected to ascertain;
  - 4.1.4. take all reasonable steps to safeguard his or her own health and safety and that of any other person who may be present or be affected by his or her actions on the Assignment and comply with the Health and Safety policies and procedures of the Client;
  - 4.1.5. not engage in any conduct detrimental to the interests of OHUK or Client which includes any conduct which could bring OHUK or the Client into disrepute or which results in the loss of custom or business by either OHUK or the Client;
  - 4.1.6. not commit any act or omission constituting unlawful discrimination against or harassment of any member of OHUK's or the Client's staff;

- 4.1.7. not at any time divulge to any person, nor use for his or her own or any other person's benefit, any Confidential Information relating to the Client's or OHUK's employees, business affairs, transactions or finances;
  - 4.1.8. on completion of the Assignment or at any time when requested by the Client or OHUK, return to the Client or to OHUK as appropriate, any property or items provided to the Agency Worker in connection with or for the purpose of the Assignment, including, but not limited to any equipment, materials, documents, swipe cards or ID cards, uniforms, personal protective equipment or clothing.
  - 4.2. The Agency Worker warrants that:
    - 4.2.1. the Agency Worker is legally entitled to work in the United Kingdom or the location of the Assignment if it is outside of the United Kingdom;
    - 4.2.2. any information provided by the Agency Worker in any registration document and CV is accurate and not misleading;
    - 4.2.3. the Agency Worker has disclosed to OHUK any unspent criminal convictions; and
    - 4.2.4. the Agency Worker is not aware of any reason why it would be detrimental to the interests of the Client or the Agency Worker for the Agency Worker to carry out the Assignment.
  - 4.3. The Agency Worker shall notify OHUK without delay if the Agency Worker is unable to give the warranties referred to in clause 4.2 at any time.
  - 4.4. If the Agency Worker carries out a Rail Assignment:
    - 4.4.1. the Agency Worker must comply with all Network Rail requirements regarding, without limitation, daily and weekly working hours, drug & alcohol testing, site conduct and health & safety practices;
    - 4.4.2. OHUK may provide PPE to the Agency Worker for use during the Rail Assignment and the Agency Worker must return the PPE to OHUK in good condition (fair wear and tear excepted) on termination of the Rail Assignment;
    - 4.4.3. OHUK may recover from the Agency Worker as an Agreed Deduction, the replacement cost of any PPE which is lost by the Agency Worker or which is not returned to OHUK in accordance with clause 4.4.2;
    - 4.4.4. The Agency Worker shall be liable for any costs suffered or incurred by OHUK as a result of the Client carrying out a "for cause" drug and alcohol test on the Agency Worker and OHUK may recover such costs as an Agreed Deduction;
    - 4.4.5. Upon termination of the Rail Assignment, the Agency Worker must immediately notify OHUK and, unless the Agency Worker is due to commence another Rail Assignment under OHUK's sponsorship, the Agency Worker must return their Sentinel PTS Card to OHUK without delay.
  - 4.5. If the Agency Worker is unable for any reason to attend work during the course of an Assignment, they should inform OHUK and the Client within 1 hour of the commencement of the working day.
  - 4.6. The Agency Worker acknowledges that any breach of these Terms may cause OHUK to suffer loss and OHUK may recover such loss from the Agency Worker.
- 5. TIMESHEETS**
- 5.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less or is completed before the end of a week) the Agency Worker shall deliver to OHUK a timesheet duly completed to indicate the number of hours worked during the preceding week (or such lesser period) and signed by an authorised representative of the Client. The Agency Worker must ensure that the timesheet is delivered to OHUK
  - 5.2. Subject to clause 5.3, OHUK shall pay the Agency Worker each Friday for all hours worked in the previous week.
  - 5.3. Where the Agency Worker fails to submit a properly authenticated timesheet OHUK shall conduct further investigations into the hours claimed by the Agency Worker and the reasons that the Client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Agency Worker but OHUK shall endeavour to ensure that such delay shall not exceed ten working days.
  - 5.4. OHUK warrants that it shall pay for all hours actually worked by the Agency Worker regardless of whether OHUK has received or expects to receive payment from the Client for those hours.
  - 5.5. For the purposes of the WTR, the Agency Worker's working time shall only consist of those periods during which the Agency Worker carries out activities or duties for the Client as part of the Assignment. Time spent travelling to the Client's premises (apart from time spent travelling between two or more premises of the Client), lunch breaks and other rest breaks shall not count as part of the Agency Worker's working time for these purposes. This clause 5.5 is subject to any variation set out in the Assignment Schedule or any variation to the Assignment Schedule which OHUK may make for the purpose of compliance with the AWR.
- 6. REMUNERATION**
- 6.1. OHUK shall pay to the Agency Worker the Agreed Rate of Pay until the Agency Worker completes the Qualifying Period. The Agreed Rate of Pay will be notified on a per Assignment basis as set out in the Assignment Schedule but shall not be less than the National Minimum Wage in force from time to time.
  - 6.2. Upon the Agency Worker completing the Qualifying Period, OHUK shall pay to the Agency Worker:
    - 6.2.1. the Qualifying Rate of Pay; and
    - 6.2.2. the Emoluments,

which will be set out in an Assignment Schedule.

- 6.3. Subject to any statutory entitlement, the Agency Worker is not entitled to receive payment from OHUK or the Client for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.
- 6.4. Upon completion of the Qualifying Period, the Agency Worker may be entitled to receive a bonus. The Agency Worker must comply with any requirements of OHUK or the Client relating to the assessment of the Agency Worker's performance for the purpose of determining whether or not the Agency Worker is entitled to a bonus and the amount of any such bonus. If the Client confirms in writing that the Agency Worker is entitled to receive a bonus, OHUK will pay the bonus to the Agency Worker.

## **7. ANNUAL LEAVE**

- 7.1. The Agency Worker is entitled to paid annual leave according to the statutory minimum as provided by the WTR from time to time; the current statutory entitlement to paid annual leave under the WTR is 5.6 weeks inclusive of public holidays.
- 7.2. Entitlement to payment for leave under clause 7.1 shall accrue in proportion to the amount of time worked by the Agency Worker on Assignment during the Leave Year.
- 7.3. On completion of the Qualifying Period, the Agency Worker may be entitled to annual leave in addition to the Agency Worker's entitlement under the WTR. If this is the case, any such entitlement(s), the date from which any such entitlement(s) will commence and how payment for such entitlement(s) accrues will be as set out in the Assignment Schedule or any variation to the Assignment Schedule.
- 7.4. OHUK may make payments in respect of any contractual annual leave which exceeds the statutory minimum on a rolled-up basis.
- 7.5. All entitlement to paid annual leave must be taken during the Leave Year in which it accrues and the Agency Worker is responsible for ensuring that all paid annual leave is requested and taken within the Leave Year.
- 7.6. If the Agency Worker wishes to take paid annual leave during the course of an Assignment, the Agency Worker should notify OHUK of the dates of the intended absence, giving notice of at least twice the length of the period of leave that the Agency Worker wishes to take. In certain circumstances OHUK may require the Agency Worker to take paid annual leave at specific times or may notify the Agency Worker of periods when paid annual leave cannot be taken. Where the Agency Worker has given notice of a request to take paid annual leave in accordance with this clause, OHUK may give counter-notice to the Agency Worker to postpone or reduce the amount of leave that the Agency Worker wishes to take. In such circumstances, OHUK will inform the Agency Worker in writing giving at least the same length of notice as the period of leave that it wishes to postpone or reduce it by.
- 7.7. The payment which the Agency Worker will receive in respect of periods of annual leave taken during the course of an Assignment will be calculated in accordance with and paid in proportion to the number of hours which the Agency Worker has worked on Assignment. Payments for annual leave will be calculated on the basis of rates paid during the Client's normal working hours i.e. those which do not attract overtime rates of pay.
- 7.8. Subject to clause 7.3, in the course of any Assignment during the first Leave Year, the Agency Worker is entitled to request leave at the rate of one-twelfth of the Agency Worker's total holiday entitlement in each month of the leave year.
- 7.9. Save where otherwise specified in the Assignment Schedule, where a public holiday falls during an Assignment and the Agency Worker does not work on that day, then subject to the Agency Worker having accrued entitlement to payment for leave in accordance with clause 7.2 or clause 7.3 (if applicable), that day shall count as part of the Agency Worker's paid annual leave entitlement.
- 7.10. Where this contract is terminated by either party, the Agency Worker shall be entitled to a payment in lieu of any untaken leave where, at the date of termination, the amount of leave taken is less than the amount accrued.

## **8. SICKNESS ABSENCE**

- 8.1. The Agency Worker must notify OHUK of any sickness absence by telephone in accordance with clause 4.5.
- 8.2. The Agency Worker may be eligible for Statutory Sick Pay provided that the Agency Worker meets the relevant statutory criteria.
- 8.3. The Agency Worker is required to provide OHUK with evidence of incapacity to work which may be by way of a self-certificate for the first 7 days of incapacity and a Statement of Fitness for Work ("Statement") thereafter.
- 8.4. For the purposes of the Statutory Sick Pay scheme, the qualifying days shall be the days on which the Agency Worker would usually work in the relevant Assignment.
- 8.5. If the Agency Worker submits a Statement or similar medical evidence, which indicates that the Agency Worker may, subject to certain conditions, be fit to work, OHUK will consult with the Client and the Agency Worker as appropriate to assess whether the conditions identified in the Statement or similar documentation can be satisfied for the duration of the Assignment.
- 8.6. Where clause 8.5 applies, the Agency Worker's placement in a new Assignment or continuation in an ongoing Assignment may be subject to the Agency Worker agreeing to a variation of the Terms or the assignment details set out in the Assignment Schedule to accommodate any conditions identified in the Statement or other medical evidence as appropriate.

**9. TERMINATION**

- 9.1. Subject to any notice provision in the Assignment Schedule, any of OHUK, the Agency Worker or the Client may terminate an Assignment at any time without prior notice or liability.
- 9.2. Irrespective of any notice period specified in the Assignment Schedule, OHUK may terminate the Assignment at any time and without notice or any payment in lieu of notice if:
- 9.2.1. the Client notifies OHUK that the Agency Worker is incapable of carrying out the Assignment to the required standard;
  - 9.2.2. the Client notifies OHUK of a serious issue with the Agency's Worker's conduct on Assignment;
  - 9.2.3. OHUK reasonably considers it to be detrimental to the interests of the Client or the Agency Worker for the Assignment to continue; or
  - 9.2.4. OHUK terminates the supply of the Agency Worker to the Client by reason of the Client's financial situation or any dispute with the Client.
- 9.3. Unless the Agency Worker commences a further Assignment, OHUK will forward a P45 to the Agency Worker's last known address within four weeks of an Assignment terminating.
- 9.4. The Agency Worker's obligations under clauses 4.1.8, 10, 11 and 12.1 shall survive termination of the Assignment.

**10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1. The Agency Worker acknowledges that all Intellectual Property deriving from services carried out for the Client by the Agency Worker during the Assignment shall belong to the Client and the Agency Worker hereby (i) unreservedly assigns all rights in such Intellectual Property to the Client and (ii) waives any moral rights in such Intellectual Property.
- 10.2. The Agency Worker shall execute all such documents and take all such steps as OHUK shall from time to time require in order to give effect to the Agency Worker's obligations under this clause 10.

**11. CONFIDENTIALITY**

- 11.1. In order to protect the confidentiality and trade secrets of any Client and OHUK and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Agency Worker agrees as follows:
- 11.1.1. not at any time, whether during or after an Assignment (unless expressly so authorised by the Client or OHUK as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Client or OHUK with the exception of information already in the public domain;
  - 11.1.2. to deliver up to the Client or OHUK (as directed) at the end of each Assignment all documents and other materials belonging to the Client (and all copies) which are in its possession including documents and other materials created by them during the course of the Assignment; and
  - 11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to the Client except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Client or OHUK as appropriate.

**12. DATA PROTECTION**

- 12.1. The Agency Worker warrants that in relation to these Terms, the Agency Worker shall comply strictly with all Data Protection Laws and shall not do or permit to be done anything which might cause OHUK or the Client to breach any Data Protection Laws.
- 12.2. The Agency Worker consents to OHUK, any other intermediary involved in supplying the services of the Agency Worker to the Client (now or in the future), and the Client processing their personal data for purposes connected with the Assignment or pursuant to these Terms. The Agency Worker acknowledges that such data processing may take place outside of the EEA.

**13. SEVERABILITY**

If any of the provisions of these Terms 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 law.

**14. NOTICES**

All notices which are required to be given in accordance with these Terms 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, by email or facsimile transmission. Any such 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 or facsimile transmission, when that email or facsimile is sent.

**15. GOVERNING LAW & JURISDICTION**

These Terms shall be interpreted in accordance with the law of England & Wales and any dispute between the parties shall be subject to the exclusive jurisdiction of the Courts of England & Wales.