

## 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

“Agency Worker” means the agency worker to be supplied by the Employment Business to provide services to the Hirer.;

“Agency Workers Regulations” means the Agency Workers Regulations 2010;

“Agreed Deductions” means any deductions the Agency Worker has agreed can be made from their pay;

“Applicant or Temporary Worker” means the individual who is introduced by the Employment Business to provide

services to the Hirer;

“Assignment” means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer;

“Assignment Details Form” means written confirmation of the assignment details to be given to the Agency Worker following acceptance of the Assignment;

“Charge Rate” means the Employment Business’ charges calculated in accordance with clause 6 and as may be varied from time to time in accordance with these Terms

“Calendar Week” means any period of 7 days starting with the same day as the first day of the First Assignment;

“Conduct Regulations” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

“Confidential Information” means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the Assignment by the Hirer or the Employment Business or by third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

“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 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 the Employment Business 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;

“Employment Business” Connex Education Partnership Limited (registered company number 9942486) of Unit A Telford Court, Chester Gates Business Park, Chester, CH1 6LT

“Engagement” means the engagement (including the Agency Worker’s acceptance of the Hirer’s offer), employment or use of the Agency Worker by the Hirer or any third party to whom the Agency Worker has been introduced by the Hirer, on a permanent or temporary basis, whether under a contract of service or for services, and/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;

“First Assignment” means the relevant Assignment; or if, prior to the relevant Assignment:

- (a) the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
- (b) 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 Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

“Hirer” means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is supplied or introduced;

“Hirer’s Group” means:

- (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, 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 Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

“Introduction” means:

- (a) The Hirer’s interview of an Applicant or Temporary Worker in person or by telephone, following the Hirer’s instruction; or
- (b) the passing to the Hirer of a curriculum vitae or information which identifies the Applicant or Temporary Worker; and which leads to an Engagement of that Applicant or Temporary Worker by the Hirer

“Period of Extended Hire” means any additional period that the Hirer 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 relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in the Schedule to these Terms;

“Relevant Period” means the later of;

- (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or
- the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by Employment Business 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;

“Temporary Work Agency” means as defined in the Schedule to these Terms;

“Terms” means these terms fee payable in accordance with clause 8 of these terms and Regulation 10 of the Conduct Regulations;

“Transfer Fee” means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;

“Vulnerable Person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

“Working Time Regulations” 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 contained 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 (before or after these Terms) under it from time to time.

## 2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Business and the Hirer for the supply of the Agency Worker's services by the Employment Business to the Hirer and are deemed to be accepted by the Hirer by virtue of its request for, interview with or Engagement of the Agency Worker, or the passing of any information by the Hirer about an Agency Worker to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3. Subject to clause 6.2, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed by a Director of the Employment Business. The Employment Business reserves the right to review and to revise these Terms in consultation with the Hirer. If the Hirer does not wish to accept such varied terms it shall be entitled to terminate the Assignment immediately.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973 (as amended) when introducing Agency Workers for Assignments with the Hirer.

## 3. HIRER OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
  - 3.1.1. the type of work that the Agency Worker would be required to do;
  - 3.1.2. the location and hours of work;
  - 3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
  - 3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
  - 3.1.5. the date the Hirer requires the Agency Worker to commence the Assignment;
  - 3.1.6. the duration or likely duration of the Assignment.
- 3.2. The Hirer will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Hirer requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Hirer requires the Agency Worker to work in excess of 48 hours.
- 3.3. The Hirer will comply with its obligations under the Agency Workers Regulations including without limitation under Regulation 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 Agency Workers Regulations and shall indemnify the Employment Business for any liability, cost, claim, award or any other expense incurred by it arising out of (a) a breach or alleged breach by the Hirer of the Agency Workers Regulations or (b)



- arising out of any act or omission of the Hirer that means the Employment Business cannot comply with its obligations under the Agency Workers Regulations.
- 3.4. To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request to provide the Employment Business with any information reasonably required by the Employment Business in order for the Employment Business to comply with its obligations under the Agency Workers Regulations and without prejudice to the generality of the foregoing :
- 3.4.1. 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 Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- 3.4.2. if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, 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;
- 3.4.3. to inform the Employment Business if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment carried out work which could be deemed to count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the Agency Workers Regulations because s/he has:
- 3.4.3.1. completed two or more assignments with the Hirer;
- 3.4.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
- 3.4.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;
- 3.4.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
- 3.4.4.1. 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 Hirer 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;
- 3.4.4.2. 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;
- 3.4.4.3. 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 Hirer considers that the relevant individual is a Comparable Employee; and
- 3.4.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and save where the Agency Worker will not complete the Qualifying Period during the term of the
- 3.4.5. Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 3.5. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Hirer will:
- 3.5.1. integrate the Agency Worker into its relevant performance appraisal system;
- 3.5.2. assess the Agency Worker's performance;
- 3.5.3. provide the Employment Business with 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
- 3.5.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.6. The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.7. The Hirer warrants that:
- 3.7.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to-date; and
- 3.7.2. 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 clauses 3.4, 3.5 and 3.6;
- 3.8. Without prejudice to clauses 14.7 and 14.8, the Hirer shall inform the Employment Business in writing of any:
- 3.8.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the Agency Workers Regulations; and
- 3.8.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will 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 such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.9. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.
- 3.10. The Hirer shall not allow any Agency Worker to undertake any work other than that which has been notified by the Hirer in accordance with clause 3.1.1 to the Employment Business.
- 3.11. The Hirer shall verify at the time that the Agency Worker begins to render services for or on behalf of the Hirer that the Agency Worker is suitable for the purposes for which he or she is required and that he or she has the capability to carry out the duties required, including the operation of any machinery or vehicles.
- 3.12. The Hirer hereby undertakes to comply with all obligations, duties and regulations (whether statutory or otherwise and without prejudice to the generality of the foregoing those relating to the place, nature or system of work) in any way arising from or directly or indirectly connected with the services rendered by an Agency Worker.
- 3.13. Throughout the duration of the Assignment the Hirer undertakes to exercise all supervision, direction and control over the manner, time and place in which each Agency Worker carries out their work for the Hirer.
- 3.14. The Hirer shall advise the Employment Business of all health and safety matters about which the Agency Worker should be informed and in this respect the Hirer shall be responsible for taking appropriate measures to ensure the health and safety of the Agency Worker at all times during the Assignment as though the Agency Worker were an employee of the Hirer. For the avoidance of doubt this includes undertaking necessary risk assessments for each Agency Worker in relation to the role for which they have been engaged and the reporting of any reportable accidents or injuries to the Employment Business and appropriate authorities.
- 3.15. The Hirer shall at all times comply with its obligations under the Agency Workers Regulations, including but not limited to providing access to collective facilities and amenities and employment opportunities.

#### **4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER**

- 4.1. When Introducing an Agency Worker to the Hirer the Employment Business shall first have obtained confirmation:



- 4.1.1. of the identity of the Agency Worker;
- 4.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; and that the Agency Worker is willing to work in the Assignment.
- 4.2. The Employment Business will inform the Hirer of the Charges on the written request by the Hirer at any time.

## 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) the Hirer shall approve a timesheet (paper or electronic) verifying the number of hours worked by the Agency Worker during that week. Approval of timesheets must be received by the Employment Business no later than 12pm on a Monday for the previous week unless otherwise requested in writing by the Employment Business.
- 5.2. Approval of the timesheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to approve a timesheet because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. Failure to approve the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked but if a duly authorised timesheet (electronic or otherwise) is not received by the Employment Business it reserves the right to delay payment to the extent permitted by Regulation 12 of the Conduct Regulations whilst seeking verification of the hours worked by other means.
- 5.3. The Hirer shall not be entitled to decline to approve a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clause 10.1 below shall apply.

## 6. **CHARGES**

- 6.1. The Hirer agrees to pay the Charges as notified to and agreed with the Hirer. The Charges are calculated according to the number of hours worked by the Agency Worker or such daily rates as may be agreed with the Hirer
  - 6.1.1. Charges for Agency Workers engaged by the Employment Business comprise the following:
    - 6.1.2. the Agency Worker's pay;
    - 6.1.3. an amount equal to any paid holiday leave to which the Agency Worker is entitled under the Working Time Regulations and, where applicable, the Agency Workers Regulations and which is accrued during an Assignment;
    - 6.1.4. any other amounts to which the Agency Worker is entitled under the Agency Workers Regulations, where applicable;
    - 6.1.5. employer's National Insurance contributions; Pension and Apprenticeship Levy contributions;
    - 6.1.6. any travel, hotel or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; and
    - 6.1.7. the Employment Business' commission.
  - 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
    - 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
    - 6.2.2. if there is any variation in the Relevant Terms and Conditions.
  - 6.3. The Charges are payable within 14 days of the date of invoice.
  - 6.4. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.5 immediately following any such award



and the Employment Business will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business' commission on the bonus (calculated using the same percentage rate as that used under clause 6.1.6) in addition to any bonus payable to the Agency Worker.

- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.1
- 6.6. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of National Westminster Bank plc from the due date until the date of payment.
- 6.7. No refunds/rebates are payable in respect of the Charges of the Employment Business unless agreed otherwise in writing by a Director of the Employment Business. All refunds/rebates against any invoice are void if the client fails to meet the conditions of payment as per clause 6.3
- 6.8. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 6.9. In the event that any amount is outstanding after the period for payment set out in Clause 6.3, the Employment Business shall be entitled to refer the Hirer to the collections agency appointed by the Employment Business from time to time and the Hirer shall be liable to pay all costs incurred as a result in collecting any unpaid amounts from the Hirer.

## 7. PAYMENT OF THE AGENCY WORKER

Unless employed through a third-party intermediary, The Employment Business assumes responsibility for paying the Agency Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## 8. TRANSFER FEES

- 8.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages an Agency Worker Introduced by the Employment Business other than via the Employment Business or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via the Employment Business and:
  - 8.1.1. where the Agency Worker has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or
  - 8.1.2. where the Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer. The Transfer Fee will be calculated in accordance with Schedule 2.
- 8.2. If the Hirer wishes to Engage the Agency Worker other than via the Employment Business without liability to pay a Transfer Fee, the Hirer may, on giving 7 days' written notice to the Employment Business, engage the Agency Worker for the Period of Extended Hire specified in Schedule 2.
- 8.3. During such Period of Extended Hire the Employment Business shall supply the Agency Worker on the same terms on which s/he 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 8.2; and the Hirer shall continue to pay the Charges set out in clause 6. If the Employment Business is unable to supply the Agency Worker for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Hirer does not wish to hire the Agency Worker on the same terms as the Assignment; but the Agency Worker is Engaged by the Hirer, the Hirer shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Hirer during any part of the Period of Extended Hire worked by the Agency Worker before being Engaged by the Hirer. If the Hirer fails to give notice of its intentions to Engage the Agency Worker other than via the Employment Business before such Engagement commences, the parties that the Transfer



fee shall be due in full.

- 8.4. Where prior to the commencement of the Hirer's Engagement other than via the Employment Business the Employment Business and the Hirer 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 Hirer Engaging the Agency Worker for the agreed fixed term. Should the Hirer extend the Agency Worker's Engagement or re-Engage the Agency Worker within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
- 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Agency Worker other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Agency Worker terminates or terminates before the end of the fixed term referred to in clause 8.4.

## 9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 9.1. Where:
  - 9.1.1. the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker; and
  - 9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer; and such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event.
- 9.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act 2006.
- 9.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006 and to allow the Employment Business to select a suitable Agency Worker for the Assignment.
- 9.4. In particular in the event that the Hirer removes an Agency Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Barring Service (DBS) (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## 10. UNSUITABILITY OF THE AGENCY WORKER

- 10.1. The Hirer undertakes to supervise the Agency Worker sufficiently to ensure the Hirer's satisfaction with the Agency Worker's standards of work. If the Hirer reasonably considers that the services of the Agency Worker are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Agency Worker. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker, provided that the Hirer has notified the Employment Business immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:

- 10.1.1. within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
- 10.1.2. within 2 hours for Assignments of 7 hours or less; and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Employment Business before 5pm on the day the Assignment is terminated or where termination occurs after 2pm before noon on the next working day.
- 10.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Agency Worker supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 10.3. The Hirer shall notify the Employment Business immediately and without delay and in any event within two hours if the Agency Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

## **11. TERMINATION OF THE ASSIGNMENT**

Any of the Hirer, the Employment Business or the Agency Worker may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 6 above).

## **12. CONFIDENTIALITY AND DATA PROTECTION**

- 12.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 12.2. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.
- 12.3. The Hirer consents to the Employment Business conducting credit checks on the Hirer and making such other checks and enquiries regarding the Hirer as it considers necessary or desirable.

## **13. LIABILITY**

- 13.1. Whilst reasonable efforts by the Employment Business to give satisfaction to the hirer by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any loss, expenses, damage or delay arising from any failure to provide any Agency Worker the Agency Worker or if the Agency Worker terminates the Assignment for any reason, save in accordance with clause 14 below. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury or for any other loss which it is not permitted to exclude under law.
- 13.2. Agency Workers supplied by the Employment Business pursuant to these Terms 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 Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Hirer.



- 13.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment.
- 13.4. The Hirer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.
- 13.5. It is the responsibility of The Hirer to complete the Request for information (RFI) when requested by the Employment Business. This includes confirmation of the pay rate of a comparable employee or in the absence of such confirmation, then an agreed payrate should the Agency Worker be employed directly by the Hirer.
- 13.6. It is the responsibility of the Agency to take reasonable steps to obtain the relevant information from The Hirer. In the event of a claim or employment tribunal resulting from The Hirer's failure to complete the RFI, then the Agency's attempts to obtain the RFI will form part of the Agency's statutory defence.
- 13.7. In the absence of a completed RFI or other response from The Hirer, it is Connex Education policy to continue to supply the Agency Worker to The Hirer so as not to restrict the Agency Worker's right to paid work with The Hirer, which could be deemed at Employment Tribunal as AWR avoidance. In the event of a claim when the agency can demonstrate it has taken reasonable steps then the Hirer will be deemed at fault and liable for any adverse findings at Employment Tribunal.
- 13.8. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Hirer.
- 13.9. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 13.10. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer 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 Hirer'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.
- 13.11. The Employment Business shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the Employment Business shall be entitled to a reasonable extension of the time for performing such obligations.

#### **14. LIMITATIONS OF LIABILITY THE HIRER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 14.1. Nothing in these Terms shall limit or exclude the liability of the Employment Business for death or personal injury caused by its negligence or fraud or fraudulent misrepresentation.
- 14.2. Subject to clause 14.1:
  - 14.2.1. the Employment Business shall under no circumstances whatever be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract between the Hirer and the Employment Business; and
  - 14.2.2. the Employment Business's total liability to the Hirer in respect of damage to any tangible property that is

not insured by the Hirer arising under or in connection with the contract between the Hirer and the Employment Business whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall in no circumstances exceed 1 million per claim (it being acknowledged by the Hirer that the Hirer is in a better position than the Employment Business to insure property belonging to the Hirer including without limitation all freehold and leasehold property); and

- 14.2.3. the Employment Business's total liability to the Hirer in respect of all other losses arising under or in connection with the contract between the Hirer and the Employment Business, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
  - 14.2.3.1. 50,000 per claim; and
  - 14.2.3.2. in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period the higher of 100,000 and the equivalent of the total Charges paid by the Hirer to the Employment Business in that period.
- 14.3. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the contract between the Hirer and the Employment Business.
- 14.4. This clause 14 shall survive termination of the contract between the Hirer and the Employment Business.

**15. 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.

**16. 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 applicable laws.

**17. GOVERNING LAW AND JUSTICE**

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

**Signed for and behalf of the Hirer:** \_\_\_\_\_

[print name here] \_\_\_\_\_

I can confirm I am authorised to sign Terms for and on behalf of the Hirer.

Date: \_\_\_\_\_

**SCHEDULE 1: “COMPARABLE EMPLOYEE”, “QUALIFYING PERIOD” AND “TEMPORARY WORK AGENCY”**

“Comparable Employee” means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and
- (b) 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. For the purpose of the definition of “Qualifying Period” in clause 1.1 of these Terms, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:
  - (a) 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;
  - (b) the break is:
    - (i) for any reason and not more than six Calendar Weeks;
    - (ii) wholly due to the fact that 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;
    - (iii) 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;
    - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
      - i. ordinary, compulsory or additional maternity leave;
      - ii. ordinary or additional adoption leave;
      - iii. ordinary or additional paternity leave;
      - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
      - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
    - (v) wholly due to the fact that 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;
    - (vi) wholly due to a temporary cessation in the Hirer’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 Hirer;
    - (vii) wholly due to a strike, lock-out or other industrial action at the Hirer’s establishment; or
    - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and

(c) the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer 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 Hirer 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 Hirer 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 does not count for the purposes of the definition of "Qualifying Period".

"Temporary Work Agency" means as defined in Regulation 4 of the Agency Workers Regulations being 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:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or
- (b) 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.

## **SCHEDULE 2: TRANSFER FEES**

- (a) The Transfer Fee referred to in clause 8 shall be calculated as follows: 20% of the Remuneration payable to the Agency Worker during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Hourly Charges multiplied by 300.
- (b) The Period of Extended Hire, referred to in clause 8, before the Hirer Engages an Agency Worker shall be: 24 weeks.