



**– TERMS of ENGAGEMENT –
AGREEMENT WITH THE LIMITED COMPANY CONTRACTOR
(OPT IN VERSION)**

(Where the Contractor is under the supervision, direction or control of the client and has not opted out of the 2003 Conduct Regulations)

(These Terms are for use where the Contractor will be under the direction, supervision or control of the client i.e. the arrangement does not meet the tests of self-employment AND the limited company contractor HAS NOT opted out* of the protection of the Conduct Regulations 2003¹)

** The Conduct of Employment Agencies and Employment Businesses Regulations 2003, which come into force on the 6th April 2004, place obligations on employment businesses in relation to dealings with work seekers and hirers. These apply equally to limited company contractors though the Regulations do not apply to limited company contractors until 6th July 2004. Under the Regulations limited company contractors are entitled to opt out of the Regulations provided they give notice to that effect in writing signed by both the individual supplied to do the work and someone signing on behalf of the limited company, before the start of any assignment and provided they are not being supplied to work with children under 18 or vulnerable adults. A form of opt out notification is given in Chapter 13C of the REC Legal Reference Guide. REC has provided model terms for a situation where the contractor is likely to be under the supervision of the client but wishes to opt-out in Chapter 13B (3) and (4) although there is little or no benefit in opting out for a Contractor with this type of arrangement.*

1. DEFINITIONS

1.1. In these Terms of Engagement the following definitions apply: –

- | | |
|---------------------|--|
| “Assignment” | means the period during which the Contractor is engaged by the Employment Business to render services to the Client; |
| “Client” | means the person, firm or corporate body together with any subsidiary or associated Company as defined by the Companies Act 1985 requiring the services of the Contractor; |

¹ Conduct of Employment Agencies and Employment Businesses Regulations 2003



“Contractor” means the Limited Company engaged by the Employment Business to provide the services of its employees, officers or representatives to the Client;

“Employment Business” means Kent Social Care Professionals Limited of Golden Boot Chambers, 27 Gabriels Hill, Maidstone, Kent, ME15 6HX;

“Relevant Period” means the longer period of either 14 weeks from the first² day on which the Contractor worked for the Client, or 8 weeks from the day after the Contractor was last supplied by the Employment Business to the Client.

1.2. Unless the context otherwise requires, references to the singular include the plural.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

2. THE CONTRACT

2.1. These Terms constitute a contract for services between the Employment Business and the Contractor upon being signed on behalf of the Contractor and they govern all Assignments undertaken by the Contractor. However no contract shall exist between the Employment Business and the Contractor between Assignments

2.2. For the avoidance of doubt these Terms shall not be construed as a contract between any individual supplied or any representative of the Contractor and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Contractor.

2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Contractor and set out in writing and a copy of the varied terms is given to the Contractor stating the date on or after which such varied terms shall apply.

3. ASSIGNMENTS

3.1 The Employment Business will endeavour to obtain suitable Assignments for the Contractor to work as a . The Contractor shall not be obliged to accept an Assignment offered by the Employment Business.

² The ‘first day’ will be the first occasion on which a Contractor is supplied to work for the Client or the first day of an assignment where there has been more than 42 days since the end of any previous assignment

- 3.2 The Contractor acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees: that suitability of the work to be offered shall be determined solely by the Employment Business; that the Employment Business shall incur no liability to the Contractor should it fail to offer opportunities to work in the above category or in any other category; and that no contract shall exist between the Contractor and the Employment Business during periods when the Contractor is not working on an Assignment.
- 3.3 At the same time as an Assignment is offered to the Contractor the Employment Business shall inform the Contractor of the identity of the Client, and if applicable the nature of their business; the date the work is to commence and the duration or likely duration of the work; the type of work, location and hours during which the Contractor would be required to work; the rate of remuneration that will be paid and any expenses payable by or to the Contractor; and any risks to health and safety known to the Client in relation to the Assignment and the steps the Client has taken to prevent or control such risks. In addition the Employment Business shall inform the Contractor what experience, training, qualifications and any authorisation required by law or a professional body the Client considers necessary or which are required by law to work in the Assignment.
- 3.4 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 save where the Contractor is being offered an Assignment in the same position as one in which the Contractor had previously been supplied within the previous five business days and such information has already been given to the Contractor.
- 3.5 If, before the first Assignment, during the course of an Assignment or within the Relevant Period the Client wishes to employ the Temporary Worker direct or through another employment business, the Temporary Worker acknowledges that the Employment Business will be entitled either to charge the Client a fee or to agree an extension of the hiring period with the Client at the end of which the Temporary Worker may be engaged directly by the Client or through another employment business without further charge to the Client. In addition the Employment Business will be entitled to charge a fee to the Client if the Client introduces the Temporary Worker to a third party who subsequently engages the Temporary Worker within the Relevant Period.

4 FEES

- 4.1 The Contractor will receive payment from the Employment Business calculated at a minimum hourly rate of _____ being the minimum rate of remuneration that the Employment Business reasonably expects to achieve, for all hours worked. The actual rate will be notified on a per Assignment basis, for each hour worked during an Assignment (to the nearest quarter hour) to be paid weekly in arrears.
- 4.2 Subject to any agreement by the parties to the contrary the Contractor shall not be entitled to receive payment from either the Employment Business or the Client for time not spent on Assignment whether in respect of holidays, illness or absence for any other reason.

4.3 All payments will be made to the Contractor and the Contractor shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of its employees, officers or representatives ("Staff") for any Assignment.

5 TIME SHEETS

5.1 At the end of each week of an Assignment (or at the end of the Assignment where an Assignment is for a period of less than one week or is completed before the end of a week) the Contractor shall deliver to the Employment Business the Employment Business's timesheet duly completed to indicate the number of hours worked by the Contractor during the preceding week, signed by an authorised representative of the Client. Such timesheets should be submitted promptly to the Employment Business, and must be received by the Employment Business by no later than one calendar month following the week to which they relate. This timesheet must be accompanied by an invoice from the Contractor for the amount due from the Employment Business to the Contractor for the hours worked in that week. Such invoice should bear the Contractor's name, VAT number, and should state any VAT due on the invoice.

5.2 Subject to clause 5.3 the Employment Business shall pay the Contractor for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours.

5.3 Where the Contractor fails to submit a properly authenticated time sheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Contractor and the reasons that the Client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Contractor. The Employment Business shall make no payment to the Contractor for hours not worked.

6 LIABILITY

6.1 The Contractor shall be liable for any loss, damage or injury to any party resulting from the negligent acts or omissions of its Staff during an Assignment.

6.2 The Contractor shall ensure the provision of adequate Employer's Liability Insurance, Public Liability Insurance [Professional Indemnity Insurance] and any other suitable policies of insurance in respect of the Contractor and its Staff during an Assignment and shall make a copy of the policy available to the Employment Business upon request.

7 CONTRACTOR'S OBLIGATIONS

7.1 The Contractor agrees on its own part and on behalf of its Staff as follows:

- 7.1.1 Not to engage in any conduct detrimental to the interests of the Employment Business or the Client which includes any conduct tending to bring the Employment Business or the Client into disrepute or which results in the loss of custom or business.
- 7.1.2 To be present during the times or for the total number of hours during each day and/or week of the Assignment as may be agreed with the Employment Business or the Client.
- 7.1.3 To take all reasonable steps to safeguard its own health and safety and the health and safety of any other person who may be affected by its actions on the Assignment.
- 7.1.4 To comply with all statutory obligations and codes of practice to which the Contractor is subject in respect of its Staff including but not limited to the Working Time Regulations.
- 7.1.5 To comply with any rules or obligations in force at the premises where services are performed during Assignments to the extent that they are reasonably applicable.
- 7.1.6 To co-operate with the Client's staff and accept the direction of any person in the Client's organisation to whom it is required to report and comply with all reasonable and lawful instructions within the scope of the Assignment made by the Client.
- 7.1.7 To furnish the Employment Business with any progress reports as may be requested from time to time.
- 7.1.8 Not to sub-contract to any third party any of the services which it is required to perform under any Assignment.
- 7.1.9 To notify the Employment Business forthwith in writing if it should become insolvent, dissolved or subject to a winding up petition.
- 7.1.10 To comply with all the requirements of VAT legislation and the Companies Act 1981.
- 7.1.11 If, either before or during the course of an Assignment, the Contractor becomes aware of any reason why the individual supplied to do the work may not be suitable for an Assignment, s/he shall notify the Employment Business without delay.

8 ACKNOWLEDGEMENT

8.1 The Contractor acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from services carried out by the Contractor and its Staff for the Client during the Assignment shall belong to the Client. Accordingly the Contractor shall (and shall procure that any

relevant member of its Staff shall) execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

9 COMPUTER EQUIPMENT WARRANTY

9.1 The Contractor shall ensure that any computer equipment and associated software that it provides to its Staff for the purpose of providing the services contains anti-virus protection with the latest released upgrade from time to time.

10 CONFIDENTIALITY

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

10.1.1 Not at any time whether during or after an Assignment (unless expressly so authorised by the Client or the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or confidential information of the Client;

10.1.2 To deliver up to the Client or the Employment Business (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 it or the Staff during the course of the Assignment;

10.1.3 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 the Employment Business as appropriate.

11 TERMINATION

11.1 An Assignment may be terminated by the Employment Business, the Client or the Contractor at any time without prior notice or liability, unless otherwise specified in the assignment confirmation note. In the event of the Client terminating the assignment before the expected time of completion of the Assignment, the Contractor must obtain the Client's signature on the timesheet, showing the actual time the assignment ended.

11.2 withstanding sub-clauses 11.1 and 11.5 of this Agreement, where required by the Client, the Employment Business may without notice and without liability instruct the Contractor to cease work on an Assignment at any time, where:

- 11.2.1 The Contractor has acted in breach of the rules and regulations applicable to the Client's own staff;
 - 11.2.2 The Client reasonably believes that the Contractor has not observed any condition of confidentiality applicable to the Contractor from time to time; or
 - 11.2.3 The Contractor becomes insolvent, dissolved or subject to a winding up petition
 - 11.2.4 For any reason the Contractor proves unsatisfactory to the Client.
- 11.3 Failure by the Contractor to give notice of termination as required in the assignment confirmation note shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Contractor for any resulting loss suffered by the Employment Business.
- 11.4 If the Staff are unable for any reason to work on an Assignment the Contractor should inform the Employment Business by no later than 10.00 am on the first day of absence to enable alternative arrangements to be made.
- 11.5 The Contractor acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into between the Employment Business and the Client. In the event that the contract between the Employment Business and the Client is terminated for any reason the Assignment shall cease with immediate effect without liability to the Contractor.

12 RELATIONSHIP BETWEEN EMPLOYMENT BUSINESS AND CONSULTANCY

- 12.1 The Contractor acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the staff of the Contractor (including the payment of taxation) shall fall upon and be discharged wholly and exclusively by the Contractor. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the staff are an employee of the Employment Business, the Contractor shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related costs expenses or other losses which the Employment Business shall incur.

13 NOTICES

- 13.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the registered office from time to time of the party upon whom the notice is to be served. Any such notice may be delivered personally or by first class prepaid post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours and if by facsimile transmission when dispatched.

14 LAW

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

**Signed on behalf of the Employment Business
Director**

Date _____

**Signed on behalf of Freelance Professional Services Ltd (the Contractor)
Director**

Date _____

