

CONTRACT 4: TERMS OF ENGAGEMENT FOR AGENCY WORKERS (CONTRACT FOR SERVICES)

Jan 18

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

“Actual Rate of Pay”	means, unless and until the Agency Worker has completed the Qualifying Period, the rate of pay which will be paid for each day worked during an Assignment weekly in arrears, subject to Deductions and any Agreed Deductions, as set out in the relevant Assignment Details Form;
“Actual QP Rate of Pay”	means the rate of pay which will be paid to the Agency Worker if and when s/he completes the Qualifying Period. Such rate will be paid for each hour worked during an Assignment (to the nearest quarter hour) weekly in arrears, subject to Deductions and any Agreed Deductions, as set out in any variation to the relevant Assignment Details Form;
“Agency Worker”	means the candidate supplied by the Employment Business to provide services to the Hirer;
“Agency Workers Regulations”	means the Agency Workers Regulations 2010;
“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 upon acceptance of the Assignment;
“Conduct Regulations”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
“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;
“Emoluments”	means any pay in addition to the Actual QP Rate of Pay;
“Employment Business”	Classroom Teachers Limited, of Suite 3, First Floor, Marlborough Business Centre, 96 George Lane, South Woodford, London, E18 1AD (registered company no. 04485864)
“Engagement”	means the engagement, 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:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - i. 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
 - ii. 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;

“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” “QP”

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 (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 (b) 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 of engagement (including the attached schedule) together with any applicable Assignment Details Form;

“Transfer Fee”

means the fee payable by the Hirer to the Employment Business in accordance with clause 3.4, as permitted by Regulation 10 of the Conduct Regulations and

“Type of Work”

means education roles.

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 entire agreement between the Employment Business and the Agency Worker for the supply of services to the Hirer and they shall govern all Assignments undertaken by the Agency Worker. However, no contract shall exist between the Employment Business and the Agency Worker between Assignments. These Terms shall prevail over any other terms put forward by the Agency Worker.
- 2.2. During an Assignment the Agency Worker will be engaged on a contract for services by the Employment Business on these Terms. For the avoidance of doubt, the Agency Worker is not an employee of the Employment Business although the Employment Business is required to make the Deductions from the Agency Worker's pay. These Terms shall not give rise to a contract of employment between the Employment Business and the Agency Worker, or the Agency Worker and the Hirer. The Agency Worker is supplied as a worker, and is entitled to certain statutory rights as such, but nothing in these Terms shall be construed as giving the Agency Worker rights in addition to those provided by statute except where expressly stated.
- 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 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.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing or supplying the Agency Worker for Assignments with its Hirers.

3. ASSIGNMENTS AND INFORMATION TO BE PROVIDED

- 3.1. The Employment Business will endeavour to obtain suitable Assignments for the Agency Worker to perform the agreed Type of Work. The Agency Worker shall not be obliged to accept any Assignment offered by the Employment Business.
- 3.2. The Agency Worker acknowledges that the nature of temporary work means that there may be periods when no suitable work is available and agrees that:
 - 3.2.1. the suitability of the work to be offered shall be determined solely by the Employment Business; and
 - 3.2.2. the Employment Business shall incur no liability to the Agency Worker should it fail to offer Assignments of the Type of Work or any other work.
- 3.3. At the same time as an Assignment is offered to the Agency Worker the Employment Business shall provide the Agency Worker with an Assignment Details Form setting out the following:
 - 3.3.1. the identity of the Hirer, and if applicable the nature of their business;

- 3.3.2. the date the Assignment is to commence and the duration or likely duration of Assignment;
 - 3.3.3. the Type of Work, location and hours during which the Agency Worker would be required to work;
 - 3.3.4. the Hourly Rate that will be paid and any expenses payable by or to the Agency Worker;
 - 3.3.5. any risks to health and safety known to the Hirer in relation to the Assignment and the steps the Hirer has taken to prevent or control such risks; and
 - 3.3.6. what experience, training, qualifications and any authorisation required by law or a professional body the Hirer considers necessary or which are required by law to work in the Assignment.
- 3.4. If, before or during an Assignment or during the Relevant Period, the Hirer wishes to Engage the Agency Worker directly or through another employment business, the Agency Worker acknowledges that the Employment Business will be entitled either to charge the Hirer a Transfer Fee or to agree a Period of Extended Hire with the Hirer at the end of which the Agency Worker may be Engaged directly by the Hirer or through another employment business without further charge to the Hirer. In addition the Employment Business will be entitled to charge a Transfer Fee to the Hirer if the Hirer introduces the Agency Worker to a third party (other than another employment business) who subsequently Engages the Agency Worker, directly or indirectly, before or during an Assignment or within the Relevant Period.
- 3.5. If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, and if the Agency Worker is entitled to any terms and conditions relating to the duration of working time, night work, rest periods and/or rest breaks under the Agency Workers Regulations which are different and preferential to rights and entitlements relating to the same under the Working Time Regulations, any such terms and conditions will be as set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form (as appropriate).
- 3.6. If the Agency Worker considers that s/he has not or may not have received equal treatment under the Agency Workers Regulations, the Agency Worker may raise this in writing with the Employment Business setting out as fully as possible the basis of his/her concerns.

4. TEMPORARY WORKER'S OBLIGATIONS

- 4.1. The Agency Worker is not obliged to accept any Assignment offered by the Employment Business but if the Agency Worker does accept an Assignment, during every Assignment and afterwards where appropriate, s/he will:
- 4.1.1. co-operate with the Hirer's reasonable instructions and accept the direction, supervision and control of any responsible person in the Hirer's organisation;
 - 4.1.2. observe any relevant rules and regulations of the Hirer's establishment (including normal hours of work) to which attention has been drawn or which the Agency Worker might reasonably be expected to ascertain;
 - 4.1.3. 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 Hirer;

- 4.1.4. not engage in any conduct detrimental to the interests of the Employment Business and/ or Hirer which includes any conduct which could bring the Employment Business and/or the Hirer into disrepute and/or which results in the loss of custom or business by either the Employment Business or the Hirer;
 - 4.1.5. not commit any act or omission constituting unlawful discrimination against or harassment of any member of the Employment Business' or the Hirer's staff;
 - 4.1.6. 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 Hirer's or the Employment Business' employees, business affairs, transactions or finances;
 - 4.1.7. on completion of the Assignment or at any time when requested by the Hirer or the Employment Business, return to the Hirer or where appropriate, to the Employment Business, any Hirer 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. If the Agency Worker accepts any Assignment offered by the Employment Business, as soon as possible prior to the commencement of each such Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request, the Agency Worker undertakes to:
- 4.2.1. inform the Employment Business of any Calendar Weeks between 1 October 2011 and prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment in which the Agency Worker has worked in the same or a similar role with the relevant Hirer via any third party and which the Agency Worker believes count or may count toward the Qualifying Period;
 - 4.2.2. 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; and
 - 4.2.3. inform the Employment Business if, since 1 October 2011, s/he has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 4.2.3.1. completed two or more assignments with the Hirer;
 - 4.2.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 4.2.3.3. 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.
- 4.3. If the Agency Worker is unable for any reason to attend work during the course of an Assignment s/he should inform the Employment Business within 1 hour of the commencement of the Assignment or shift. In the event that it is not possible to inform the Employment Business within these timescales, the Agency Worker should alternatively inform the Hirer and then the Employment Business as soon as possible.

- 4.4. If, either before or during the course of an Assignment, the Agency Worker becomes aware of any reason why s/he may not be suitable for an Assignment, s/he shall notify the Employment Business without delay.

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 the Employment Business a timesheet duly completed to indicate the number of days worked during the preceding week (or such lesser period) and signed by an authorised representative of the Hirer.
- 5.2. Subject to clause 5.3 the Employment Business shall pay the Agency Worker for all hours worked regardless of whether the Employment Business has received payment from the Hirer for those hours.
- 5.3. Where the Agency Worker fails to submit a properly authenticated timesheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Agency Worker and the reasons that the Hirer has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Agency Worker. The Employment Business shall make no payment to the Agency Worker for hours not worked.
- 5.4. For the avoidance of doubt and for the purposes of the Working Time Regulations, the Agency Worker's working time shall only consist of those periods during which s/he is carrying out activities or duties for the Hirer as part of the Assignment. Time spent travelling to the Hirer's premises (apart from time spent travelling between two or more premises of the Hirer), lunch breaks and other rest breaks shall not count as part of the Agency Worker's working time for these purposes. This clause 5.4 is subject to any variation set out in the relevant Assignment Details Form or any variation to the relevant Assignment Details Form which the Employment Business may make for the purpose of compliance with the Agency Workers Regulations.

6. REMUNERATION

- 6.1. The Employment Business shall pay to the Agency Worker the Actual Rate of Pay unless and until the Agency Worker completes the Qualifying Period. The Actual Rate of Pay will be notified on a per Assignment basis and as set out in the relevant Assignment Details Form.
- 6.2. If the Agency Worker has completed the Qualifying Period on the start date of the relevant Assignment or following completion of the Qualifying Period during the relevant Assignment, the Employment Business shall pay to the Agency Worker:
- 6.2.1. the Actual QP Rate of Pay; and
- 6.2.2. the Emoluments (if any),
- 6.3. Subject to any statutory entitlement under the relevant legislation referred to in clauses 7 and 8 below and any other statutory entitlement, the Agency Worker is not entitled to receive payment from the Employment Business or the Hirer for time not spent on Assignment, whether in respect of holidays, illness or absence for any other reason unless otherwise agreed.

7. SICKNESS ABSENCE

- 7.1. The Agency Worker may be eligible for Statutory Sick Pay provided that s/he meets the relevant statutory criteria.

- 7.2. The Agency Worker is required to provide the Employment Business with evidence of incapacity to work which may be by way of a self-certificate for the first 7 days of incapacity and a doctor's certificate thereafter.
- 7.3. For the purposes of the Statutory Sick Pay scheme there is one qualifying day per week during the course of an Assignment and that qualifying day shall be the Wednesday in every week.

8. TERMINATION

- 8.1. Any of the Employment Business, the Agency Worker or the Hirer may terminate the Agency Worker's Assignment at any time without prior notice or liability.
- 8.2. The Agency Worker 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 Hirer. In the event that the contract between the Employment Business and the Hirer is terminated for any reason the Assignment shall cease with immediate effect without liability to the Agency Worker (save for payment for hours worked by the Agency Worker up to the date of termination of the Assignment).
- 8.3. If the Agency Worker does not inform the Hirer or the Employment Business that they are unable to attend work during the course of an Assignment (as required in clause 4.3) this will be treated as termination of the Assignment by the Agency Worker in accordance with clause 9.1, unless the Agency Worker can show that exceptional circumstances prevented him or her from complying with clause 4.3.
- 8.4. If the Agency Worker is absent during the course of an Assignment and the Assignment has not been otherwise terminated under clauses 9.1 or 9.3 above the Employment Business will be entitled to terminate the Assignment in accordance with clause 9.1 if the work to which the Agency Worker was assigned is no longer available.

9. DATA PROTECTION

- 9.1. The Agency Worker warrants that in relation to these Terms, s/he shall comply strictly with all provisions applicable to him/her under the Data Protection Laws and shall not do or permit to be done anything which might cause the Employment Business or the Hirer to breach any Data Protection Laws.

10. GOVERNING LAW AND JURISDICTION

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

Signed by the Agency Worker

[print name here]

Date

SCHEDULE: "QUALIFYING PERIOD" AND "TEMPORARY WORK AGENCY"

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;
 - 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.