

## Terms of Business – Permanent & Fixed Term Candidates

### I. DEFINITIONS & INTERPRETATION

- 1.1. In these Terms of Business (**Terms**) the following definitions apply:
- 1.1.1. **Cancellation Fee** means the fee payable by the Client to Girling Jones in accordance with clause 6 if the Client withdraws an offer of Engagement;
- 1.1.2. **Candidate** means a person who is Introduced by Girling Jones to the Client;
- 1.1.3. **Client** means the person, firm, company or business to which the Candidate is Introduced by Girling Jones;
- 1.1.4. **Conduct Regulations** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- 1.1.5. **Engagement** means the engagement, employment or use of the Candidate by the Client on any basis whatsoever; whether directly or indirectly through any third party;
- 1.1.6. **Girling Jones** means Girling Jones Limited (Registered in England & Wales No. 07492806) whose address for correspondence is 1<sup>st</sup> Floor South, Kings Wharf, The Quay, Exeter EX2 4AN;
- 1.1.7. **Introduction** means (i) the provision by Girling Jones to the Client of a CV or other information which expressly or impliedly identifies a Candidate (ii) the arrangement by Girling Jones of an interview or meeting between the Client and a Candidate whether face to face, by telephone or by web/video conference or (iii) any discussion or negotiation between the Client and Girling Jones in respect of the potential engagement of a Candidate; "Introduce," "Introduces" and "Introduced" shall be interpreted accordingly;
- 1.1.8. **Introduction Fee** means the fee payable by the Client to Girling Jones;
- 1.1.9. **Introduction Period** means the 12 month period from the most recent Introduction or Third Party Introduction of a Candidate;
- 1.1.10. **Payment Terms** means 30 days from the date of Girling Jones's invoice;
- 1.1.11. **Refund Period** means the 12 week period from commencement of a Candidate's engagement;
- 1.1.12. **Remuneration** means (i) the gross annualised remuneration package payable to the Candidate by the Client including, without limitation, basic salary, guaranteed and estimated bonuses and commission, allowances and all other taxable and non-taxable emoluments. £5,000 shall be added to the Remuneration in respect of any company vehicle provided to the Candidate or (ii) if the Candidate is Engaged on a self-employed basis or via a personal services company or any other corporate entity, the total estimated annualised charges payable to the Candidate by the Client;
- 1.1.13. **Third Party Engagement** means the engagement of a Candidate by a party other than the Client following a Third Party Introduction; and
- 1.1.14. **Third Party Introduction** means the disclosure of a Candidate's details to a third party by the Client, including disclosure to any holding, subsidiary or associated company of the Client.
- 1.2. Unless the context requires otherwise, references to the singular include the plural.
- 1.3. A person includes a natural person, firm, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4. Any phrase introduced by the words including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those words.
- 1.5. A reference to a statute or statutory provision is reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.6. The headings in these Terms are for convenience only and do not affect the interpretation of any clause.

### 2. BASIS OF CONTRACT

- 2.1. These Terms shall form the contract between Girling Jones and the Client for the Introduction of Candidates and shall be deemed to be accepted upon the Client instructing Girling Jones to introduce a Candidate, the Client interviewing a Candidate pursuant to an Introduction by Girling Jones or the Client otherwise acting upon an Introduction, whichever occurs first.
- 2.2. These Terms contain the entire agreement between the parties and prevail over any terms or conditions of purchase proposed or issued by the Client unless otherwise agreed in writing by a director of Girling Jones.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of Girling Jones and the Client, are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Client warrants that it has not relied on any contractual statement, promise or representation made or given by or on behalf of Girling Jones which is not set out in these Terms.
- 2.5. For the purposes of the Conduct Regulations, Girling Jones shall act as an Employment Agency when providing recruitment services to the Client pursuant to these Terms.

### 3. INTRODUCTIONS & OFFERS

- 3.1. Girling Jones shall use reasonable endeavours to introduce Candidates from time to time who meet the criteria specified by the Client pursuant to clause 9.3 but shall have no liability to the Client for failing to introduce any Candidates.
- 3.2. An Introduction by Girling Jones shall be deemed to be the sole and effective cause of any Engagement of the Candidate unless all of the following conditions apply:
- 3.2.1. The Client has, in the six-month period prior to Girling Jones's Introduction of the Candidate, been in active discussions with the Candidate, directly or through another employment agency, with a view to employing the Candidate in the same position; and
- 3.2.2. The Client provides evidence of such active discussions to Girling Jones's reasonable satisfaction; and
- 3.2.3. The Client has not asked to arrange or arranged an interview of the Candidate through Girling Jones.

- 3.3. The Client shall:
- 3.3.1. Notify Girling Jones immediately of any offer of an Engagement which it makes to a Candidate and the relevant terms of such offer;
- 3.3.2. Notify Girling Jones immediately upon the acceptance of an offer of Engagement by a Candidate; and
- 3.3.3. Provide details to Girling Jones of the Remuneration agreed with the Candidate and, if requested by Girling Jones, a copy of the proposed contract of employment.

### 4. INTRODUCTION FEES

- 4.1. The Client will pay an Introduction Fee to Keen Thinking Ltd t/a Simplicity (who are assigned the debt on behalf of Girling Jones) in respect of each Introduction by Girling Jones which results in an accepted offer of Engagement within the Introduction Period.
- 4.2. Keen Thinking Ltd t/a Simplicity shall issue an invoice on behalf of Girling Jones for the Introduction Fee on the first day of the Engagement or as soon as reasonably practicable thereafter. VAT shall be charged on all sums invoiced under these Terms.
- 4.3. The Client shall settle Girling Jones's invoice within the Payment Terms and time for payment shall be of the essence.
- 4.4. If the Client does not pay Girling Jones's invoice within the Payment Terms, Girling Jones may:
- 4.4.1. Pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation in respect of such invoice;
- 4.4.2. Charge interest on the invoiced sum of 8% per annum above the base rate of the Bank of England from the due date until the date of payment;
- 4.4.3. Refer the collection of such payment to a collection agency or legal representatives and, if so referred, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by Girling Jones in recovering payment from the Client.
- 4.5. **Subject to clauses 4.6 and 4.7, the Introduction Fee payable to Girling Jones by the Client for an Introduction resulting in an Engagement shall be an amount equivalent to 25% of the Remuneration payable to the Candidate in the first calendar year of the Engagement.**

- 4.6. The minimum Introduction Fee for an Engagement shall be £2,000.
- 4.7. Subject to clause 4.6, the Introduction Fee shall be charged on a pro-rata basis for a fixed term Engagement of less than 12 months (**Fixed Term Contract**).
- 4.8. If a Fixed Term Contract is extended, or if the Client Engages the Candidate within 12 months from termination or expiry of the Fixed Term Contract, the Client shall pay the balance of the full Introduction Fee to Girling Jones.
- 4.9. If the amount of actual Remuneration is not known or the Client fails to provide details of such Remuneration to Girling Jones, Girling Jones will charge an Introduction Fee based on the level of Remuneration which, in Girling Jones's reasonable opinion, is the market rate for the Engagement.
- 4.10. If the parties agree in writing that Girling Jones shall conduct a specific advertising campaign for the Client's vacancies, Girling Jones shall submit a separate invoice to the Client upon incurring any advertising costs. Such invoice shall be payable by the Client in accordance with clause 4.3.
- 4.11. All Introduction Fees shall be charged to the Client in Pounds Sterling (GBP). Where a Candidate's Remuneration is not provided in GBP, for the purposes of calculating the Introduction Fee, Girling Jones shall convert the Remuneration to GBP using the exchange rate published by the Bank of England on the date of invoice and shall submit the invoice in GBP. The Client shall bear all bank and currency exchange charges when paying Girling Jones's invoice.

### 5. REFUND GUARANTEE

- 5.1. If the Engagement terminates in the Refund Period, the Introduction Fee or part will be refunded to the Client in accordance with the scale set out in clause 5.3 (**Refund**), provided that:
- 5.1.1. The Client paid the Introduction Fee within the Payment Terms;
- 5.1.2. The Client notified Girling Jones in writing within 7 days of the termination of the Engagement, giving the reasons for such termination;
- 5.1.3. The Candidate was not made redundant or wrongfully or unfairly dismissed by the Client;
- 5.1.4. The Engagement was not a Third Party Engagement or Fixed Term Contract;
- 5.1.5. The Client has not materially breached these Terms; and
- 5.1.6. The Candidate was not previously supplied to the Client by Girling Jones as a Temporary Worker for a period of more than one month.
- 5.2. It is a condition precedent to any post Engagement benefit, such as rebate, refund, replacement, discount guarantee or any other form of warranty mentioned in or otherwise inferred from these Terms of Business that the relevant invoice is paid to terms.
- 5.3. Subject to clause 5.1, Girling Jones shall within 30 days give a Refund to the Client in accordance with the following scale:

Week Candidate Leaves	% Refund
1-4	100%
5-8	50%
9-12	25%

- 5.4. For the purposes of determining the applicable Refund, if any, the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client but for any period of garden leave or payment in lieu of notice, whichever is later.
- 5.5. If the Client re-Engages the Candidate within 12 months of termination of the Engagement, an Introduction Fee shall become payable and on this re-engagement, there shall be no entitlement to a Refund should the Candidate's Engagement then terminate.

### 6. CANCELLATION FEE

If the Client decides to withdraw an offer of Engagement for a reason which does not relate to the Candidate's suitability for the position, the Client shall pay to Girling Jones a Cancellation Fee of 25% of the Introduction Fee, which shall be invoiced in accordance with clause 4.

## 7. NON-SOLICITATION

If the Client makes an offer of employment or engagement to any Girling Jones employee with whom the Client has had material dealings and the employee commences such employment or engagement within 12 months of leaving Girling Jones, the Client shall pay an Introduction Fee to Girling Jones, which shall be calculated and invoiced in accordance with clause 4.

## 8. THIRD PARTY INTRODUCTIONS

- 8.1. If a Third Party Introduction results in a Third Party Engagement within the Introduction Period, the Client shall pay an Introduction Fee, which shall be calculated in accordance with clause 4.5.
- 8.2. The Client shall have no entitlement to a Refund if the Third Party Engagement terminates for any reason.

## 9. RESPONSIBILITY FOR VETTING CHECKS

- 9.1. Girling Jones shall endeavour to ensure that Candidates Introduced to the Client are suitable to work in the position which the Client is seeking to fill by taking reasonably practicable steps to:
  - 9.1.1. Ensure that it would not be detrimental to the interests of either the Client or the Candidate to work in the relevant position;
  - 9.1.2. Ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body for the Candidate to work in the relevant position; and
  - 9.1.3. Confirm that the Candidate is willing to work in the position.
- 9.2. Notwithstanding clause 9.1, the Client shall satisfy itself as to the suitability of the Candidate for the position they are seeking to fill by:
  - 9.2.1. Taking up any references provided by the Candidate before Engaging the Candidate;
  - 9.2.2. Checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 9.2.3. Arranging any medical examinations and/or investigations into the medical history of any Candidate; and
  - 9.2.4. Checking any other requirements, qualifications or permission required for the Candidate to be engaged by the Client.
- 9.3. The Client shall provide to Girling Jones all such information as Girling Jones shall reasonably require regarding the position which the Client is seeking to fill including, without limitation, the information specified in Regulation 18 of the Conduct Regulations.

## 10. CONFIDENTIALITY & DATA PROTECTION

- 10.1. The Client must use any information supplied by Girling Jones regarding a Candidate solely for the purpose of conducting the recruitment process and must:
  - 10.1.1. Not disclose any such information to any third party prior to making an offer of Engagement without the express written consent of Girling Jones;
  - 10.1.2. Not contact the Candidate's current employer for a reference until the Candidate has formally accepted an offer of Engagement;
  - 10.1.3. Not export any personal data regarding the Candidate outside of the European Economic Area without the written consent of the Candidate; and
  - 10.1.4. Ensure that its employees are subject to obligations of confidentiality preventing the disclosure of a Candidate's details to any third party.

## 11. LIABILITY

- 11.1. Whilst Girling Jones will use reasonable endeavours to ensure that any Candidate Introduced to the Client meets the requirements specified by the Client pursuant to clause 9.3, Girling Jones gives no warranty, whether express or implied, as to the suitability of a Candidate for the relevant position.
- 11.2. Girling Jones shall not be liable to the Client for any indirect or consequential losses or for any loss of profit, loss of business or loss of goodwill howsoever arising.
- 11.3. Subject to clause 11.4, the aggregate liability of Girling Jones to the Client in respect of any claim arising out of or in connection with the performance or non-performance of these Terms and whether in contract, tort (including negligence), breach of statutory duty or otherwise, is limited to the Introduction Fee paid by the Client to Girling Jones in respect of the Engagement in relation to which such claim arises or, if there was no Engagement, the sum of £5,000.
- 11.4. Girling Jones does not exclude liability for death or personal injury arising from its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.
- 11.5. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 11.6. Any claim which the Client may bring against Girling Jones in relation to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.
- 11.7. The Client shall indemnify Girling Jones against all losses, damages, costs, claims (whether actual or threatened) and fees (including legal fees) suffered or incurred by Girling Jones as a result of the Client's breach of contract, negligence (or any other tortious act), breach of statutory duty or otherwise.

## 12. BRIBERY & ANTI-CORRUPTION

- 12.1. The Client and Girling Jones each warrant that they shall:
  - 12.1.1. Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
  - 12.1.2. Promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms.

## 13. GENERAL PROVISIONS

- 13.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of Girling Jones. Girling Jones may assign any monies owing from the Client to a third party including, without limitation, a recruitment finance or factoring company.

- 13.2. The Client shall not deduct or set off against any sum due to Girling Jones under these Terms, any sum which is owed or which the Client alleges or claims is owed by Girling Jones to the Client, whether under these Terms or under any other agreement between Girling Jones and the Client.
- 13.3. 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 Terms, which shall continue to be valid to the fullest extent permitted by law.
- 13.4. No failure or delay by a party in exercising any right or remedy under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 13.5. Girling Jones and the Client do not intend these Terms to be enforceable by any third party.
- 13.6. These Terms shall be interpreted in accordance with English law.
- 13.7. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of the Terms.

Updated March 2017

## Terms of Business - Temporary Workers

### I. DEFINITIONS & INTERPRETATION

- 1.1. In these Terms of Business (Terms), the following definitions apply:
- 1.1.1. **Agency Worker** means an agency worker within the meaning of the AWR including (i) a worker who is engaged directly by Girling Jones under a contract for services (ii) a worker who is employed by an umbrella company under a contract of service and (iii) any other Representative of an Intermediary where the Assignment falls within sections 49 or 61M of ITEPA;
- 1.1.2. **Assignment** means the temporary role or project which the Temporary Worker shall undertake for the Client;
- 1.1.3. **Assignment Schedule** means the document confirming details of the Assignment which is issued to the Client by Girling Jones;
- 1.1.4. **AWR** means the Agency Workers Regulations 2010;
- 1.1.5. **Charges** means the charges made by Girling Jones for the supply of the Temporary Worker including the Temporary Worker's hourly or daily rate, Girling Jones's commission and, where relevant, any Employer's National Insurance contributions, pension contributions, holiday pay and additional monies due pursuant to the AWR;
- 1.1.6. **Client** means the business to which the Temporary Worker is Introduced by Girling Jones including, where the Client is a corporate entity, any holding, subsidiary or associated company;
- 1.1.7. **Conduct Regulations** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
- 1.1.8. **Determination** means a written assessment, in a format acceptable to Girling Jones, as to whether the Assignment falls within the scope of section 61M of ITEPA;
- 1.1.9. **Engagement** means the engagement, employment or use of the Temporary Worker by the Client on any basis whatsoever, whether directly or through any party other than Girling Jones. Engage, Engages and Engaged shall be interpreted accordingly;
- 1.1.10. **Girling Jones** means Girling Jones Limited (Registered in England & Wales No. 07492806) whose address for correspondence is 1<sup>st</sup> Floor South, Kings Wharf, The Quay, Exeter EX2 4AN;
- 1.1.11. **Intermediary** means a limited company, LLP or partnership supplied by Girling Jones to perform the Services;
- 1.1.12. **Introduction** means (i) the provision by Girling Jones to the Client of a CV or other information which expressly or impliedly identifies a Temporary Worker (ii) the arrangement of an interview or meeting between the Client and a Temporary Worker whether face to face, by telephone or by web/video conference or (iii) the supply of a Temporary Worker; and "Introduces" and "Introduced" shall be interpreted accordingly;
- 1.1.13. **ITEPA** means the Income Tax (Earnings and Pensions) Act 2003;
- 1.1.14. **Payment Terms** means 30 days from the date of Girling Jones's invoice;
- 1.1.15. **Period of Extended Hire** means an extension of the Assignment for 26 weeks;
- 1.1.16. **Public Authority** means a public authority within the meaning of section 61L of ITEPA;
- 1.1.17. **Relevant Period** means the period defined in regulation 10(5) of the Conduct Regulations;
- 1.1.18. **Remuneration** includes gross basic salary or fees, anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Worker for services provided to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £5,000 will be added to the salary in order to calculate the Transfer Fee;
- 1.1.19. **Representative** means the director, officer or representative of an Intermediary who performs the Services on behalf of the Intermediary;
- 1.1.20. **Restricted Period** means the later of (i) six months from the end of the Assignment or (ii) twelve months from the most recent Introduction of the Temporary Worker to the Client;
- 1.1.21. **SDC** means supervision, direction or control as to the manner in which the Services are carried out;
- 1.1.22. **Services** means the work to be carried out by the Temporary Worker during the course of the Assignment as described in the Assignment Schedule;
- 1.1.23. **Subcontractor** means a self-employed person engaged through an Intermediary to perform the Services;
- 1.1.24. **Temporary Worker** means the person, firm or limited company Introduced or supplied to the Client by Girling Jones and, save where otherwise indicated, includes an Intermediary, Representative, Subcontractor and Agency Worker; and
- 1.1.25. **Transfer Fee** means the fee payable by the Client in accordance with Regulation 10 of the Conduct Regulations pursuant to clause 7.1 below.
- 1.2. Unless the context requires otherwise, references to the singular include the plural.
- 1.3. A person includes a natural person, firm, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.4. Any phrase introduced by the words including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those words.
- 1.5. A reference to a statute or statutory provision is reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.6. The headings in these Terms are for convenience only and do not affect the interpretation of any clause.

### 2. BASIS OF CONTRACT

- 2.1. These Terms together with the Assignment Schedule, comprise the entire agreement between Girling Jones and the Client for the supply of a Temporary Worker to the Client to the exclusion of any alternative terms which are proposed by the Client. In the event of any conflict or inconsistency, the Assignment Schedule shall take priority.
- 2.2. These Terms shall be deemed to have been accepted by the Client upon signing the Terms to confirm acceptance, the Client acting upon an Introduction, Engaging the Temporary Worker or otherwise utilising the Temporary Worker's services, whichever occurs first.
- 2.3. The Client shall not rely on any statement, promise or representation made or given by or on behalf of Girling Jones which is not set out in these Terms.
- 2.4. No variation or alteration to these Terms shall be valid unless the details of such variation are

agreed between a director of Girling Jones and the Client, are set out in writing and a copy of the varied Terms is given to the Client stating the date on or after which such varied Terms shall apply.

- 2.5. For the purposes of the Conduct Regulations, Girling Jones shall be acting as an employment business when introducing or supplying a Temporary Worker for an Assignment with the Client.
- 2.6. Unless Girling Jones notifies the Client that a Temporary Worker has opted-out of the Conduct Regulations, the Conduct Regulations shall apply to any Assignment carried out by a Temporary Worker.

### 3. CLIENT OBLIGATIONS

- 3.1. The Client must:
- 3.1.1. Provide a safe working environment for the Temporary Worker;
- 3.1.2. Ensure that, where applicable, the Temporary Worker uses all necessary safety and personal protective equipment during the Assignment;
- 3.1.3. Comply with all statutory provisions, by-laws, codes of practice and other legal obligations in respect of the Temporary Worker's health and safety whilst carrying out an Assignment;
- 3.1.4. Maintain records of any accident or injury affecting the Temporary Worker and provide copies of such records to Girling Jones upon demand; and
- 3.1.5. Indemnify Girling Jones for any claim arising out of or in connection with the death or personal injury of the Temporary Worker in the course of or as a result of an Assignment.
- 3.2. The Client must not and must ensure that its employees, subcontractors and representatives do not unlawfully discriminate against, harass or victimise any Temporary Worker.
- 3.3. The Client must comply with the AWR and assist Girling Jones with complying with the AWR by, without limitation:
- 3.3.1. Notifying Girling Jones without delay if the Agency Worker has been supplied to the Client by any other employment business in the six month period prior to commencement of the Assignment;
- 3.3.2. Providing any Agency Worker with access to collective facilities and amenities and information about permanent employment opportunities with the Client;
- 3.3.3. Where relevant, providing written details of the relevant terms and conditions which apply to any actual or hypothetical comparator to an Agency Worker together with any amendments to such terms and conditions where appropriate;
- 3.3.4. Co-operating with Girling Jones in responding to or assisting Girling Jones with responding to any question or complaint made under the AWR in a timely manner;
- 3.3.5. Permitting a pregnant Agency Worker to attend ante-natal appointments during working time after the 12-week qualifying period;
- 3.3.6. Carrying out a risk assessment in respect of any pregnant Agency Worker and making such adjustments to the Assignment as are necessary to protect such Agency Worker's health and wellbeing or, where necessary, identifying a suitable alternative Assignment for the Agency Worker to perform; and
- 3.3.7. Agreeing to a proportional increase in the Charges where necessary to ensure that the Agency Worker receives equal treatment in respect of all relevant terms and conditions after the 12-week qualifying period.
- 3.4. The Client acknowledges that an Intermediary may appoint an alternative Representative to perform the Services from time to time and, subject to verifying that the alternative Representative is equally skilled, qualified, security cleared and able to perform the Services, the Client shall accept the appointment of such alternative Representative.
- 3.5. The Client shall not move any Subcontractor or Intermediary to a different task or project or otherwise materially vary the Assignment without first agreeing such move or variation with Girling Jones.
- 3.6. The Client acknowledges that the Subcontractor or Intermediary shall determine their own schedule when performing the Services and the location in which such Services are performed, subject to the Client's reasonable operational requirements and the specific nature of the Assignment.
- 3.7. The Client shall not exercise or permit any third party to exercise SDC (or assert the right thereof) over any Subcontractor or Intermediary during an Assignment. Nothing in this clause shall affect the Client's obligations under clause 3.1.
- 3.8. The Client must not request the supply of a Temporary Worker to perform the duties normally performed by (i) a worker who is taking part in official industrial action or (ii) a worker who has been transferred by the Client to perform the duties of a person taking part in official industrial action.
- 3.9. The Client must notify Girling Jones immediately if it intends to Engage a Temporary Worker, extend an Assignment or otherwise vary an Assignment in any way.

### 4. PROVISION OF INFORMATION

- 4.1. The Client must inform Girling Jones of:
- 4.1.1. The information relating to an Assignment specified in Regulation 18 of the Conduct Regulations;
- 4.1.2. Whether the Temporary Worker shall require a DBS disclosure (or any other check) to carry out the Assignment;
- 4.1.3. Any Health and Safety information which is relevant to the Assignment;
- 4.1.4. Such Information as Girling Jones may require to comply with the Working Time Regulations (WTR) and the Client shall do nothing to cause Girling Jones to breach the WTR; and
- 4.1.5. Any reason why it may be detrimental to the interests of the Temporary Worker to carry out the Assignment.
- 4.2. The Client must provide such information as Girling Jones may require to assess whether a Temporary Worker shall be subject to SDC. The Client acknowledges that Girling Jones shall rely upon the accuracy of such information and the Client must notify Girling Jones without delay if such information becomes inaccurate at any time.
- 4.3. If the Client or, where relevant, the Client's client is a Public Authority, the Client must:
- 4.3.1. Notify Girling Jones of this information without delay;
- 4.3.2. Provide a Determination to Girling Jones prior to commencement of the Assignment if the Assignment shall be carried out by an Intermediary which meets any of the conditions set out in s61N ss(9-11) of ITEPA;
- 4.3.3. Ensure that any Determination provided to Girling Jones is accurate; and
- 4.3.4. Provide all such information as Girling Jones may reasonably require, without delay, to justify or support the Determination.
- 4.4. Girling Jones shall issue an Assignment Schedule to the Client on commencement of the Assignment or as soon as practicable thereafter within three business days.

## 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 one week or less), the Client shall approve a timesheet in a format specified by Girling Jones verifying the times worked by the Temporary Worker during that week.
- 5.2. The Client is responsible for ensuring that the times shown on the Temporary Worker's timesheet are correct and that only duly authorised employees sign the timesheet.
- 5.3. Signature of the timesheet by the Client is confirmation of the time worked. If the Client is unable to sign a timesheet produced for authentication by the Temporary Worker because the Client disputes the time claimed to have been worked, the Client shall inform Girling Jones as soon as is reasonably practicable and shall co-operate fully and in a timely manner with Girling Jones to enable Girling Jones to establish the time, if any, which was worked by the Temporary Worker.
- 5.4. A refusal or failure to sign the timesheet shall not absolve the Client's obligation to pay Girling Jones' Charges in respect of the time worked by the Temporary Worker.
- 5.5. The Client acknowledges that Girling Jones shall rely upon the Client's confirmation of the time worked by the Temporary Worker and the Client must not retrospectively adjust the time duly confirmed as having been worked by the Temporary Worker.
- 5.6. Girling Jones shall be responsible for making all payments to the Temporary Worker for the Services.
- 5.7. The Client must not refuse to sign a timesheet on the basis that the Client is dissatisfied with the Services or the Temporary Worker but the Client may be entitled to terminate the Assignment in accordance with clause 8 below.

## 6. CHARGES

- 6.1. The Client shall pay the Charges specified in the Assignment Schedule.
- 6.2. Keen Thinking Ltd t/a Simplicity (who are assigned the debt on behalf of Girling Jones) shall issue an invoice to the Client for the Charges each week and such invoice shall be payable within the Payment Terms. VAT shall be charged at the standard rate on all sums invoiced under these Terms.
- 6.3. Girling Jones may vary the Charges, by giving written notice to the Client, to reflect any additional cost in supplying the Temporary Worker as a result of the AWR or any other statutory provision.
- 6.4. No refund or rebate shall be given in respect of the Charges and the Client shall pay the Charges without deduction or set off including, without limitation, any deduction in respect of the CITB levy.
- 6.5. If an invoice is not paid within the Payment Terms, Girling Jones may:
  - 6.5.1. Terminate the supply of Temporary Workers to the Client without notice;
  - 6.5.2. Pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation in respect of such invoice;
  - 6.5.3. Charge interest on the invoiced sum of 8% per annum above the base rate of the Bank of England from the due date until the date of payment; and
  - 6.5.4. Refer the collection of such payment to a collection agency or legal representatives and, if so referred, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by Girling Jones in recovering payment from the Client.

## 7. TRANSFER FEES

- 7.1. Subject to clause 7.6, the Client shall pay a Transfer Fee ("Transfer Fee") if the Client (i) Engages a Temporary Worker Introduced by Girling Jones or (ii) introduces the Temporary Worker to a third party and such introduction results in the hire of the Temporary Worker by the third party and:
  - 7.1.1. Where the Temporary Worker has not opted out of the Conduct Regulations, such Engagement or hire commences within the Relevant Period; or
  - 7.1.2. Where the Temporary Worker has opted out of the Conduct Regulations, such Engagement or hire commences within the Restricted Period.
- 7.2. The Transfer Fee shall be a sum equivalent to 25% of the Remuneration which is payable, or would be payable, to the Temporary Worker in the first calendar year of the Engagement.
- 7.3. If the actual Remuneration is not disclosed to Girling Jones, the Transfer Fee shall be the hourly Charge at which the Temporary Worker was (or would have been) supplied to the Client multiplied by 360.
- 7.4. For the avoidance of doubt, clause 7 shall not apply in circumstances where Girling Jones is acting as an employment agency.
- 7.5. No refund of the Transfer Fee will be made if the Engagement or hire terminates for any reason.
- 7.6. Unless Temporary Worker has opted out of the Conduct Regulations, the Client may, instead of paying the Transfer Fee, by giving written notice to Girling Jones, request that the Temporary Worker provides the Services for the Period of Extended Hire commencing on the date on which such written notice is received by Girling Jones.
- 7.7. During a Period of Extended Hire, Girling Jones shall supply the Temporary Worker:
  - 7.7.1. On terms no less favourable than the terms which applied immediately before Girling Jones received the notice pursuant to clause 7.6; or
  - 7.7.2. Where Girling Jones has not previously supplied the Temporary Worker to the Client, on such terms as Girling Jones may reasonably specify.
- 7.8. If Girling Jones is unable to supply the Temporary Worker for any part of the Period of Extended Hire for a reason outside of Girling Jones' control or if the Client does not wish to hire the Temporary Worker on the terms as set out in clause 7.7, the Client shall pay the Transfer Fee, reduced in proportion to any part of the Period of Extended Hire for which the Temporary Worker was supplied by Girling Jones following receipt of the Client's written notice under clause 7.6.

## 8. TERMINATION OF THE ASSIGNMENT

- 8.1. Subject to clauses 8.2, 8.3 and 8.3, either party may terminate an Assignment at any time by giving the notice specified in the Assignment Schedule or, if no period of notice is specified, at any time without notice.
- 8.2. Irrespective of any notice period specified in the Assignment Schedule, either party may terminate an Assignment without notice if the other party has committed a serious or persistent breach of its obligations under this Agreement, if the other party undergoes a change of control or becomes insolvent.
- 8.3. Girling Jones may terminate an Assignment without notice if it becomes aware of any reason why the Temporary Worker is unsuitable to work in the Assignment.
- 8.4. Girling Jones shall not be liable to the Client if the Temporary Worker fails to give the agreed notice, if any, upon terminating the Assignment.

- 8.5. If the Client, acting reasonably, is dissatisfied with the Services, the Client may terminate an Assignment on the first day of the Assignment within (i) the first 4 hours if the booking was for more than 7 hours or (ii) the first 2 hours if the booking was for 7 hours or less. Provided that such termination is confirmed by the Client in writing within 48 hours, the Employment Business shall cancel the Charges for such period.

## 9. CONFIDENTIALITY & DATA PROTECTION

- 9.1. All information relating to a Temporary Worker is confidential and provided solely for the purpose of arranging an Assignment. Such information must not be used for any other purpose nor divulged to any third party and the Client shall comply with the Data Protection Act 1998 when receiving and processing such data.
- 9.2. Save to the extent that Girling Jones is required to disclose such information to the Temporary Worker, Girling Jones shall keep confidential any information provided by the Client for the purpose of complying with the AWR and shall not use it for any other purpose.

## 10. NON-SOLICITATION

- If the Client makes an offer of employment or engagement to any Girling Jones employee with whom the Client has had material dealings and the employee commences such employment or engagement within 12 months of leaving Girling Jones, the Client shall pay a fee to Girling Jones, which shall be calculated in accordance with the fee structure in clause 7.2 and payable by the Client within the Payment Terms.

## 11. LIABILITY

- 11.1. The Client shall be responsible for the supervision, direction and control of an Agency Worker during their Assignment.
- 11.2. Girling Jones shall not be liable for the acts or omissions of any Temporary Worker or for the performance or non-performance of the Services. In the event of any error or defect in the Services, the Client may have the benefit of a third-party right against the relevant Temporary Worker and Girling Jones shall provide details of such right, if any, to the Client upon request.
- 11.3. Girling Jones shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise for failing to supply a Temporary Worker, for terminating an Assignment in accordance with these Terms, for any claim for loss of profit or business, or for any indirect or consequential loss arising out of or in connection with these Terms.
- 11.4. Subject to clause 11.5, the aggregate liability of Girling Jones to the Client in respect of any claim or series of claims arising out of or in connection with these Terms shall be limited to 15% of the Charges paid by the Client in relation to the relevant Temporary Worker in the three-month period immediately prior to such claim arising or, if there was no supply of a Temporary Worker, the sum of £5,000.
- 11.5. Girling Jones does not exclude liability for death or personal injury arising from its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.
- 11.6. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 11.7. Any claim which the Client may bring against Girling Jones pursuant to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.
- 11.8. The Client shall indemnify and keep indemnified Girling Jones against all losses, damages or claims suffered or incurred by Girling Jones as a result of the Client's breach of contract, negligence (or any other tortious act), breach of statutory duty or otherwise.
- 11.9. The Client shall indemnify and keep indemnified Girling Jones against any liability for PAYE income tax or National Insurance contributions (including any penalties) suffered or incurred by Girling Jones in relation to any Temporary Worker to the extent that such liability is caused by any act or omission of the Client.

## 12. BRIBERY & ANTI-CORRUPTION

- 12.1. The Client and Girling Jones each warrant that they shall:
  - 12.1.1. Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and
  - 12.1.2. Promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms.

## 13. GENERAL PROVISIONS

- 13.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of Girling Jones. Girling Jones may assign any monies owing from the Client to a third party including, without limitation, a recruitment finance or factoring company.
- 13.2. 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 Terms, which shall continue to be valid to the fullest extent permitted by law.
- 13.3. No failure or delay by a party in exercising any right or remedy under the Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 13.4. The Terms shall be interpreted in accordance with English law.
- 13.5. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of the Terms.