

September 2020

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

“Agency 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 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 agreed with the Hirer prior to commencement of the Assignment;
“AWR”	means the Agency Workers Regulations 2010
“AWR Claim”	means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR;
“Calendar Week”	means any period of seven days starting with the same day as the first day of the First Assignment;
“Charges”	means the Employment Business’s charges calculated in accordance with clause 6 and as may be varied from time to time in accordance with these Terms;
“Comparable Employee”	means as defined in Schedule 1 to these Terms;
“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 a 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;

“Employment Business”

Active Recruitment SEN Ltd Limited (registered company no. 0999 9993 of 1 Caxton House, Old Station Road, Loughton, IG10 4PE.

“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 by 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; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Agency Worker is an officer, employee or other representative; 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 this defined term) a period 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 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 (i) the passing to the Hirer of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Hirer's interview of the Agency Worker (in person or by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of the temporary worker or the Agency Worker; and “Introduced” and “Introducing” shall be construed accordingly;
- “Losses”** means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;
- “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 Schedule 1 to these Terms;

“Relevant Period”	means the later of (a) the period of 8 weeks commencing on the day after the <u>last</u> 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 <u>first</u> day on which the Agency Worker worked for the Hirer having been supplied by the 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;
“Relevant Terms and Conditions”	means terms and conditions relating to: <ul style="list-style-type: none"> (a) pay; (b) the duration of working time; (c) night work; (d) rest periods; (e) rest breaks; and (f) annual leave that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by custom and practice, including copies of all relevant documentation;
“Remuneration”	includes gross base salary or fees, guaranteed and/or 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 Agency Worker for services provided to or on behalf of the Hirer or any third party.
“Temporary Work Agency”	means as defined in Schedule 1 to these Terms;
“Terms”	means these terms of business (including the attached schedules) together with any applicable Assignment Details Form;
“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 needs care or attention, and includes any person under the age of eighteen; and
“WTR”	means the Working Time Regulations 1998

- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings 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 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. For the avoidance of any doubt, where a client provides an offer letter which has been prepared by the council and signed by them, by the school presenting this letter it will be regarded they also have confirmed these details. The reason for this is to prevent any misunderstandings, where a candidate has been taken perm and the school forward the agency a letter from a third party which may have incorrect information. Active Recruitment SEN Ltd will always request a minimum of the signed employment contract and first month's payslip to double check that the information is correct. The Hirer will be regarded as the school and if they use the council to write a letter, we will still regard the school as the hirer to avoid any confusion after the fact.
- 2.2. Unless otherwise agreed in writing by Raphael Pepper of Active Recruitment SEN Ltd, 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 between Raphael Pepper of Active Recruitment SEN Ltd of the Employment Business and the Hirer and are set out in writing and a copy of the varied Terms is given to the Hirer stating the date on or after which such varied Terms shall apply. If the agreement is varied without notice, for example the salary given for invoice purposes is lower than the actual remuneration, then Active Recruitment SEN Ltd must be told immediately or the company will seek redress in the courts.
- 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 payment for overtime payments and the day's finish time, after which overtime would begin and be charged from;
 - 3.1.4. 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 to work in the position;
 - 3.1.5. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
 - 3.1.6. the date the Hirer requires the Agency Worker to commence the Assignment; and
 - 3.1.7. the duration or likely duration of the Assignment.
- 3.2. The Hirer will assist the Employment Business in complying with the Employment Business's duties under the WTR 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 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 AWR.
- 3.4. To enable the Employment Business to comply with its obligations under the AWR, 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's request:
 - 3.4.1. to inform the Employment Business of any Calendar Weeks in which 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 during the relevant Assignment which count or may count towards the Qualifying Period;
 - 3.4.2. if, 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 which may count towards the Qualifying Period, 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, 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 AWR 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

- 3.4.5. save where the Agency Worker will not complete the Qualifying Period during the term of the 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 awarding any bonus to which the Agency Worker may be entitled under the AWR, 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's requests for information and any other requirements to enable the Employment Business to comply with the AWR.
- 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 AWR; 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 AWR 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.

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 inform the Hirer where requested at the time:

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; for the avoidance of doubt, qualifications vary from role to role and it is not the duty of Active SEN to clarify whether a fully qualified staff is required for the role; instead if the hirer is satisfied that the staff can competently do the role then it is the role of Active SEN to advise them on the hire instead. For example, if a school needed an SEN TA and none with experience and/or qualifications were available, Active SEN would advise on which staff had relevant prior experience, for example they worked as a nanny. In the case of teaching we work in a similar manner providing staff who have taught previously and have demonstratable experience comparable to the role they would be doing; so that the hirer can be supported at that time. For the avoidance of doubt this can mean that although a teacher may not have QTS or QTLS, Active SEN will endeavour to check they have taught as an unqualified teacher or have the relevant specialist expertise in a UK setting to enable them to deliver teaching and planning. In addition if a hirer were to request a specialist such as an intervenor we would firstly consider the range of courses some of which last 2 days and others can be at degree level and then base our advice based on the competence of the staff in relation to job that they will be doing for the hirer.

4.1.3. that the Agency Worker is willing to work in the Assignment; and

4.1.4. of the Charges. Active SEN staff are paid at the market rate or above to ensure they complete their assignments. For the avoidance of doubt, it is crucial to the welfare of the children and the continuity of the hirer that they do not leave early due to a wage dispute. Therefore we make it clear to the hirer at the onset that our policy is to begin with the best rate possible and not engage in long running salary negotiations during the placement as they are not conducive to a positive working atmosphere. Active SEN charges and pays rates that are based on the market and the work done by the staff. The qualifications are secondary as they do not always reflect the staff ability, as demand for them with can be higher than other staff who have more qualifications but are less able in the classroom.

- 4.2. 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 Agency Worker is Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.

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 sign the Employment Business's timesheet verifying the number of hours worked by the Agency Worker during that week. The candidate must be permitted to take a photo of the signed timesheet for their own reference, so it can be referred to in case of dispute.
- 5.2. Signature of the timesheet can be completed online as not all clients sign paper copies. For the avoidance of doubt, it is understood by all parties that Active Recruitment SEN Ltd keep a daily booking sheet which shows who works and when. The company will ask the school to sign off any missing timesheets. When this has been done once, and no reply has been received after 5 working days then Active Recruitment SEN Ltd will invoice the school. For the sake of impartiality and natural justice it must be noted that if the school decide not to sign them off, this does not imply in any way that they disagree or believe there is anything wrong with the information on the timesheet, it is simply that they have not found the time to email it back. For the sake of the company, it is essential that invoices are paid on time and the only way to do this is to have all timesheets signed off. If the school does not sign them off – they must still pay on time as the information is recorded on the company booking sheet. If a school wishes to query the invoice, they must first return the timesheet and must comment on it if they are unhappy or disagree with it. Ignoring it will not be a valid reply and the Invoice will still be issued and payment sought and expected. By having the member of staff, the client school agrees the charge rate set by the agency and if the school chooses to ignore the timesheet request, this will be taken as acceptance of the Active SEN's charge rate.
- 5.3. If Active SEN confirm that they will not charge the Hirer for that staff what this means is as follows: The timesheet must still be signed off as Active SEN will be paying them. However, unless it is a free trial day, Active SEN will charge for the wages part only the charge and the Active SEN charge is the part that is waived. Active SEN staff are always paid unless it is agreed in advance verbally or in writing that it is an unpaid trial day, and this is at the absolute discretion of Active SEN.
- 5.4. The Hirer still will pay the invoice irrespective of whether a staff has signed in. The Hirer is responsible for ensuring that staff sign in and out and it can be that it was not possible for a variety of reasons on the day. Therefore if the school do not have a record of staff signing in but Active SEN has recorded that they have worked then the school must still sign of the timesheet and pay the invoice. If a staff has not arrived, then the school must let Active SEN know in timely fashion.
- 5.5. Signature of the timesheet by the Hirer is confirmation of the number of hours worked. If the Hirer is unable to sign a timesheet produced for authentication by the Agency

Worker 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 sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the hours worked.**

- 5.6. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. If the Hirer is dissatisfied with the Agency Worker, the provisions of clause 10 below shall apply. The Hirer must inform the company as soon as the timesheet is received.

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 and comprise the following:
- 6.1.1. the Agency Worker's daily and or hourly rate of pay;
 - 6.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment; for the avoidance of doubt, holiday pay is rolled up in the daily rate, and is clearly stated on Active Recruitment SEN Ltd.'s Terms and Conditions which a candidate must agree to when they register with the company before working.
 - 6.1.3. any other amounts to which the Agency Worker is entitled under the AWR, where applicable;
 - 6.1.4. employer's National Insurance contributions;
 - 6.1.5. 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
 - 6.1.6. the Employment Business's commission, which varies accordingly. For the avoidance of doubt, the mark up rate by Active SEN is like the school's/ hirer's own admin. In much the same way a school will spend 30-40% of their DSG on admin and running costs, Active SEN also faces considerable costs, and unlike the hirer can only charge when it has successfully made a placement. This is essential to our running costs and Active SEN cannot provide staff where there is no mark up or the mark up is so small that it is less than the cost of providing the service. Active SEN also uses Bank Factoring which means that we face basic costs just for invoicing a client and so there must be a normal margin just to provide the service.
 - 6.1.7. Any extra payment such as travel expenses which may be paid to the candidate at the company's discretion
 - 6.1.8. Late payment fees where a client persistently pays late despite Active SEN's help in sending a weekly statement of account. Active SEN staff are nearly

all paid weekly and via PAYE, therefore by not also paying weekly, the cost to Active SEN increases exponentially when we do not receive the funds from the client to do business.

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. to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, the WTR and the Pensions Act 2008; and/or

6.2.2. if there is any variation in the Relevant Terms and Conditions.

6.3. The Employment Business will invoice the Charges to the Hirer monthly. The Hirer will pay the Charges within 30 days of the date of the invoice.

6.4. Where the Hirer does not pay within 30 days of the date of the invoice, this is taken as a breach of contract and Active SEN reserves the right to cancel any gesture of goodwill as a result. This is because they may not be affordable because of late payment which is very damaging to Active SEN's business.

6.5. 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's 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. For example, if staff were taken on permanently and then the school decided that their role should include additional work which would increase their annual salary by £5000, then, if a 10% fee were agreed, the Hirer must pay Active SEN £500. This is so that the accurate salary is given at the agreement and not hidden until afterwards.

6.6. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.5.

6.7. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

6.8. The Employment Business will not refund any of the Charges.

6.9. 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.

7. PAYMENT OF THE AGENCY WORKER

The Employment Business is responsible 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. There is no fixed time limit for this to happen for the following reasons. SEN Education Recruitment does not a fixed pattern as in other industries and schools very often desist from offering permanent contracts. It is commonplace for staff to remain on agency for years at a time as this suits the school. Furthermore, schools are reluctant to offer permanent roles, and this is not the fault of Active SEN.

8.1.3. However, when asked Active SEN always provides the following baseline:
3 full terms 39 weeks – no fee,
2.5 full terms 5%,
Full 2 terms 10%,
1.5 – 2 full terms 12.5%
1 full term – 1.5 terms – 15%,
Less than 1 full term but more than ½ a term -- 17.5%,
Less than ½ term -- 20%

The reason why it is 20% for less than ½ a term is because that teacher was often placed at the start of the term or year and they are only on trial for a very short period before going permanent. This will cost Active SEN a substantial amount in PAYE, NI and Pension costs which must be sustainable.

8.1.4. Where a staff has worked for more than 39 weeks or a full year, they will remain staff with Active SEN unless there is a specific agreement for them to be taken permanent. They will not automatically go onto the hirer's books.

8.1.5. The reason for 8.1.4 is as follows. Each staff costs Active SEN a substantial amount of money, around £2500 just to send out, when all costs are considered, and it would be impractical for a school to ask to take the staff permanent without a clear timeframe.

8.1.6. Where a candidate has previously applied for any role with the school, the school can not use this as a reason to take them perm without a fee. This is for two reasons. Firstly, it is not relevant nor practical to work on this basis as candidates could in theory apply for dozens of jobs and in addition the school could if they wish would appoint the candidate before they began working via the agency. In addition, this creates financial uncertainty for

Active SEN and would in theory breach the Companies Act, as Active SEN could end up providing services which would cost more than they would receive in return; leading to insolvency for Active SEN. No company is permitted to allow this. As a result, it is not relevant whether a candidate has applied previously to a school, instead when they begin work the rules in these terms and conditions apply. This is in the interests of both parties and means that Active SEN can support the school or provision in the long term.

- 8.1.7. As a result, once staff have worked a full year, the schedule is reset to zero and they are charged at 20% again, if after that first full year it is not possible or suitable for them to be taken permanent. This is the only way a business-like Active SEN can guarantee its stability, and this is for the benefit of the hirer as well.
- 8.1.8. These are the base figures, but it is not unique for schools to either negotiate them or to ask for someone to remain indefinitely on days. Where the % is changed this will be agreed in writing by email.
- 8.1.9. Under no circumstances will the staff go onto the hirers books daily without a fee agreed in advance. This is to protect the work that Active SEN do and prevent capture of their business as some schools also deal in supply staff.
- 8.1.10. Active SEN only provides staff to SEN and AP provisions and faces different challenges in retaining staff, namely that they can be very expensive to Active SEN in recruiting, retaining and managing. This is further exacerbated by the regular late payments by hirers, there clause 8 is altered accordingly and in a way that allows all parties to work together.

8.2. 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 intention to Engage the Agency Worker other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.

8.3. 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 because of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated 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.

8.4. The Employment Business will not refund the Transfer Fee 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 8.3.

8.5. VAT is payable in addition to any Transfer Fee due.

8.6. The fee shall be agreed as a % of the salary. The salary will be shown in either of three ways:

- a. The Hirer tells Active SEN – but not via a 3rd party such as a letter from the Council.
- b. If for any reason, such as Active SEN receives information to the contrary, for instance, the receive a pay scale from the council which does not match the figure shown by the Hirer, then they shall ask to see both the staff first 3 payslips and the signed contract.
- c. The offer letter will not be accepted as proof of salary as it is merely an offer letter and subject to change, negotiation and the potential for additional hours.

8.7 Rebate – When the transfer fee is paid then the rebate period is understood as follows, a 10-week period – less than 1 weeks – 100% rebate, less than 2 weeks, 90% rebate, less than 3 weeks, 70% rebate, and so on. This is because by having the staff on contract the Hirer is saving money on charges and therefor there is a cost to Active SEN by the staff going perm.

8.8 Where a staff member has been booked into work and has been working at the school it is naturally assumed that they are long term, as nearly all Active SEN staff are employed in this way. The booking is not transferrable to another agency, meaning that you agree in advance not to book that staff member whilst on a booking or for 6 months after they finish via another company. This is a key tenet of our working relationship as Active SEN works hard to find the correct staff and it is not feasible for them then to be moved across to another agency when Active SEN has done the placement. It is important to note that Active SEN pay staff via PAYE and so once they are paid – the payroll cannot be undone. By working with Active SEN, you agree this in advance and this clause is the most crucial element of our working relationship as it establishes a clear line of trust that you will not move our staff over to another agency.

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 one reference from persons who are not relatives of the Agency

Worker and who have agreed that the reference 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. Active SEN completes NCTL and DBS checks for staff in addition, which add to Active SEN costs and are a reason why late payment is onerous.

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 Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in 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. If 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 (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

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 if notification of the unsuitability of the Agency Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment. By reduce the charges this means that the Hirer will still pay the basic wages of the staff but not be charged extra on top for Active costs.

- 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 2 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 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 always.
- 12.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 12.3. Information relating to the Employment Business's 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.

13. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Hirer. Accordingly, the Employment Business shall use its reasonable endeavours to ensure that the Agency Worker shall execute all such documents and do all such acts to give effect to the Hirer's rights pursuant to this clause.

14. LIABILITY

- 14.1. Whilst reasonable efforts are made 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, expense, damage or delay arising from any failure to provide any Agency Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates

the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

- 14.2. 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.
- 14.3. 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.
- 14.4. 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 WTR, 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. The Hirer will immediately inform Active SEN if a staff has been hurt or had unreasonable physical contact from a pupil at the school. For the avoidance of doubt, if this happens the Hirer must pay that staff for the day, even if they must leave work early to seek medical help.
- 14.5. The Hirer undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action.
- 14.6. 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 because of any breach of, these Terms by the Hirer.
- 14.7. 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.
- 14.8. 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.

14.9. If it is determined that inaccurate AWR information has been provided to Active SEN by the school, even at the behest of the staff, then the Hirer will compensate Active SEN in full for this. An example can be where another staff not connected to Active SEN informed the company that were offered £70 a day by the Hirer, when the Hirer told Active that all SEN TA staff received Band 6 (£82.42), then the Hirer is responsible for reimbursing the agency due to passing on misinformation.

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, including 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. The Hirer does not need to have seen these Terms and Conditions at the onset of the placement to have agreed with them; having staff in shall be seen as acceptance of these terms which are based on the REC document library and are both fair and relative.

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 fully permitted by applicable laws.

17. RIGHTS OF THIRD PARTIES

None of the provisions of these Terms are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

18. 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.

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

“Comparable Employee” means as defined in Regulation 5(4) of the AWR 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) a full week is 5 working days, part-time weeks do not count at all in figure.
- (c) the break is:
 - (i) for any reason and not more than six Calendar Weeks;
 - (ii) wholly because 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 to 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 because 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 role for a pre-determined period 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

(d) 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 AWR being a person engaged in the economic activity, public or private, whether operating for profit, and whether 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 this definition, a “hirer” means a person engaged in economic activity, public or private, whether operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

