

TERMS OF BUSINESS WITH A CLIENT FOR THE SUPPLY OF AGENCY WORKERS

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

- “Self Employed Agency Worker”** means the individual who is Introduced by the Temporary Work Agency to provide services to the Client on a self employed basis;
- “Agency Workers Regulations”** means the Agency Workers Regulations 2010
- “Assignment”** means assignment services to be performed by the Agency Worker for the Client for a period of time during which the Agency Worker is supplied by the Temporary Work Agency to work temporarily for and under the supervision and direction of the Client;
- “Assignment Details Form”** means written confirmation of the assignment details agreed with the client prior to commencement of the Assignment;
- “AWR Claim”** means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Client and/or the Temporary Work Agency for any breach of the Agency Workers Regulations;
- “Calendar Week”** means any period of seven days starting with the same day as the first day of the First Assignment;
- “Charges”** means the hourly and class charges of the Temporary Work Agency calculated in accordance with clause 6.1 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 Temporary Work Agency Regulations 2003
- “Confidential Information”** means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Client or Temporary Work Agency 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 Client or the Temporary Work Agency or by a third party on behalf of the Client 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;

“Client”

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;

“Client's Group”

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

“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;

“Engagement”

means the engagement, employment or use of the Agency Worker by the Client or any third party to whom the Agency Worker has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, an agency, licence, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“First Assignment”

means:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - (i) the Agency Worker has worked in any assignment in the same role with the relevant Client as the role in which the Agency Worker works in the relevant Assignment; and
 - (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being for the purpose of this defined term) a period of time

during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);

“Introduction”

means (i) the passing to the Client of a curriculum vitae or information which identifies the Agency Worker; or (ii) the Client’s interview of the Agency Worker (in person or by telephone or by any other means), following the Client’s instruction to the Temporary Work Agency 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 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 Client 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”

The agreed duration which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in Schedule 1 to these Terms;

“Relevant Period”

means the agreed duration of the assignment;

“Relevant Terms and Conditions”

means terms and conditions relating to:

- (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 Client 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 virtue of 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 Client or any third party.

“Temporary Work Agency”	means as defined in Schedule 1 to these Terms; The Fitness Directory Limited - 11806224
“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 is in need of care or attention, and includes any person under the age of eighteen; and
“Working Time Regulations”	means the Working Time Regulations 1998

- 1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.
- 1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, reenacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Temporary Work Agency and the Client for the supply of the Agency Worker’s services by the Temporary Work Agency to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Agency Worker, or the passing of any information by the Client about an Agency Worker to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by *a director of the* Temporary Work Agency, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 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 *a director of the* Temporary Work Agency and the Client and 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.

3. Client OBLIGATIONS

3.1. To enable the Temporary Work Agency to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Temporary Work Agency details of the position which the Client 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/classes of work;
- 3.1.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
- 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 3.1.5. the date the Client requires the Agency Worker to commence the Assignment;
- 3.1.6. the duration or likely duration of the Assignment.

3.2. The Client will assist the Temporary Work Agency in complying with the Temporary Work Agency' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Temporary Work Agency and the Client will not do anything to cause the Temporary Work Agency to be in breach of its obligations under these Regulations. If the Client requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Client must notify the Temporary Work Agency 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 Client requires the Agency Worker to work in excess of 48 hours.

3.3. The Client 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 Agency Workers Regulations.

3.4. To enable the Temporary Work Agency to comply with its obligations under the Agency Workers Regulations, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Temporary Work Agency' request:

- 3.4.1.1. completed two or more assignments with the Client;
- 3.4.1.2. completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
- 3.4.1.3. worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;
- 3.4.1.4. inform the Temporary Work Agency 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

- 3.5. The Client will comply with all the Temporary Work Agency' requests for information and any other requirements to enable the Temporary Work Agency to comply with the Agency Workers Regulations.
- 3.6. The Client warrants that:
- 3.6.1. all information and documentation supplied to the Temporary Work Agency in accordance with clauses 3.4, 3.5 and 3.6 is complete, accurate and up-to-date; and
 - 3.6.2. it will, during the term of the relevant Assignment, immediately inform the Temporary Work Agency in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.4, 3.5 and 3.6;
- 3.7. Without prejudice to clauses 14.7 and 14.8, the Client shall inform the Temporary Work Agency in writing of any:
- 3.7.1. oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and
 - 3.7.2. written request for information relating to the Relevant Terms and Conditions that the Client 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 Client and the Client will take such action and give such information and assistance as the Temporary Work Agency may request, and within any timeframe requested by the Temporary Work Agency, 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 Client's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Client will provide the Temporary Work Agency with a copy of any such written statement.
- 3.8. The Client 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 Temporary Work Agency TO THE Client

- 4.1. When Introducing an Agency Worker to the Client the Temporary Work Agency shall inform the Client:
- 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;
 - 4.1.3. that the Agency Worker is willing to work in the Assignment; and
 - 4.1.4. the Charges.

- 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 Client, unless the Client requests that the information be resubmitted.

5. TIMESHEETS

5.1. At the end of each Assignment, the Client shall electronically confirm the 'Temporary Work Agency' timesheet verifying the number of hours worked by the Agency Worker.

5.2. Electronic confirmation of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to confirm a timesheet by the Agency Worker because the Client disputes the hours claimed, the Client shall inform the Temporary Work Agency as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Temporary Work Agency to enable the Temporary Work Agency to establish what hours, if any, were worked by the Agency Worker. **Failure to sign the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked.**

5.3. The Client 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. In the event that the Client is dissatisfied with the Agency Worker the provisions of clause 10.1 below shall apply.

5.4. The client will need to co-operate and pay the invoice sent for the completed hours that the Agency worker has completed. This will be via email or notified in the app a within 24 hours of the assignment.

6. CHARGES

6.1. The Client agrees to pay the Charges as notified to and agreed with the Client. 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 hourly rate of pay £16.50ph; and for classes £35 per class;
- 6.1.2. any other amounts to which the Agency Worker is entitled under the Agency Workers Regulations, where applicable;
- 6.1.3. any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable; and
- 6.1.4. the Temporary Work Agency' commission, which is calculated as a percentage of the Agency Worker's hourly rate.

6.2. The Temporary Work Agency reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:

- 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
- 6.2.2. if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Charges are electronically invoiced to the Client at the end of the assignment and will be deducted after the timesheet is electronically signed to confirm.
- 6.4. The Temporary Work Agency 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.
- 6.5. No refunds are payable in respect of the Charges of the Temporary Work Agency.
- 6.6. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

7. PAYMENT OF THE AGENCY WORKER

The Temporary Work Agency assumes responsibility for paying the Agency Worker who is contracted on a self-employed basis and therefore responsible for their own tax and national insurance contributions.

8. TRANSFER FEES

- 8.1. The Client shall be liable to pay a Transfer Fee if the Client Engages an Agency Worker Introduced by the Temporary Work Agency other than via the Temporary Work Agency 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 Temporary Work Agency and:
 - 8.1.1. where the Agency Worker has been supplied by the Temporary Work Agency, such Engagement takes place during the Assignment or within the Relevant Period; or
 - 8.1.2. where the Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Client.

The Transfer Fee will be calculated in accordance with Schedule 2.

- 8.2. If the Client wishes to Engage the Agency Worker other than via the Temporary Work Agency without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to the Temporary Work Agency, engage the Agency Worker for the Period of Extended Hire specified in Schedule 2.
- 8.3. No refund of the Transfer Fee will be paid in the event that the Engagement of the Agency Worker other than via the Temporary Work Agency by the Client or by a third party to which the Client introduces the Agency Worker terminates or terminates before the end of the fixed term.

9. UNSUITABILITY OF THE AGENCY WORKER

- 9.1. The Client undertakes to supervise the Agency Worker sufficiently to ensure the Client's satisfaction with the Agency Worker's standards of work. If the Client reasonably considers that the services of the Agency Worker are unsatisfactory, the

Client may terminate the Assignment either by instructing the Agency Worker to leave the Assignment immediately, or by directing the Temporary Work Agency to remove the Agency Worker. The Temporary Work Agency may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker, provided that the Client has notified the Temporary Work Agency immediately that they have asked the Agency Worker to leave the Assignment or the Assignment terminates:

- 9.1.1. within 4 hours of the Agency Worker commencing the Assignment where the Assignment is for more than 7 hours; or
- 9.1.2. within 2 hours for Assignments of 7 hours or less;

and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Temporary Work Agency within 48 hours of the termination of the Assignment.

- 9.2. The Temporary Work Agency shall notify the Client immediately if it receives or otherwise obtains information which gives the Temporary Work Agency reasonable grounds to believe that any Agency Worker supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 9.3. The Client shall notify the Temporary Work Agency immediately and without delay and in any event within 4 hours if the Agency Worker fails to attend work or has notified the Client that they are unable to attend work for any reason.

10. TERMINATION OF THE ASSIGNMENT

Any of the Client, the Temporary Work Agency 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 Client, who shall be liable for any Charges due under clause 6 above).

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1. All information relating to an Agency Worker is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 11.2. The Temporary Work Agency undertakes to keep confidential all Relevant Terms and Conditions that the Client discloses to the Temporary Work Agency and not to use such information except for the purposes of compliance with the Agency Workers Regulations (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).
- 11.3. Information relating to the Temporary Work Agency' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

12. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Client. Accordingly the Temporary Work Agency shall use its

reasonable endeavours to ensure that the Agency Worker shall execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

13. LIABILITY

- 13.1. Whilst reasonable efforts are made by the Temporary Work Agency to give satisfaction to the Client 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 Client, no liability is accepted by the Temporary Work Agency 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 Temporary Work Agency 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.
- 13.2. Agency Workers supplied by the Temporary Work Agency pursuant to these Terms are engaged under contracts for services. They are not the employees of the Temporary Work Agency but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client 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 Client.
- 13.3. The Client shall advise the Temporary Work Agency of any special health and safety matters about which the Temporary Work Agency is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment.
- 13.4. The Client will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employers and Public Liability Insurance cover for the Agency Worker during all Assignments.
- 13.5. The Client 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 Client to perform the duties of a person on strike or taking official industrial action.
- 13.6. The Client shall indemnify and keep indemnified the Temporary Work Agency against any Losses incurred by the Temporary Work Agency arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Client.
- 13.7. The Client shall inform the Temporary Work Agency in writing of any AWR Claim which comes to the notice of the Client as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- 13.8. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as the Temporary Work Agency may request, and within any timeframe requested by the Temporary Work Agency and at the Client's own cost, to avoid, dispute, resist,

mitigate, compromise or defend any such AWR Claim and to appeal against any judgement given in respect thereof.

14. NOTICES

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

15. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

16. GOVERNING LAW AND JURISDICTION

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

SCHEDULE 1: "COMPARABLE EMPLOYEE" AND "TEMPORARY WORK

AGENCY"

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

- (a) works for and under the supervision of the Client 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.

"Temporary Work Agency" means as defined in Regulation 4 of the Agency Workers Regulations being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

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

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 Clients. For the purpose of this definition, a "Client" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

SCHEDULE 2: TRANSFER FEES

The Transfer Fee referred to in clause 8 shall be calculated as £200 to reflect the finder fee implemented on the job board of the app and will be invoiced.