



# **TERMS AND CONDITIONS AGENCY**

**November 2022**





# Agency Agreement

*Agreement for Services as an Agency for Temporary Labour. This agreement applies to all agencies engaged by Global Experience Specialists Limited, GES Event Intelligence Limited, VIAD Service Companies Limited, Spiro and associated Group Companies (collectively "the Company")*

## **1 Basis of Agreement**

- 1.** The terms of this agreement ("the Terms") supersede all previous terms of business between the parties, it being acknowledged that there may be a Service Level Agreement ("SLA") between the Company and the Supplier, which is unaffected by this Agreement, except in the event of any conflict between these Terms and the SLA, in which case the Terms shall prevail. The Terms shall similarly prevail over any other terms and conditions, unless otherwise agreed in writing. No variation in these Terms shall be valid without the written consent of both parties.
  - 1.1 The commencement of work of any Temporary Worker at the Company shall be deemed acceptance of and agreement to these Terms.
  - 1.2 The parties acknowledge that for the purposes of the introduction or supply of Temporary Workers pursuant to these Terms, that the Supplier shall be acting as an Employment Business within the meaning of the Regulations.
  - 1.3 In the Terms, the definitions in Schedule 1 will apply.

## **2. Order of a Temporary Worker**

- 2.1 The Company may from time to time notify the Supplier of a requirement for a Temporary Worker. The Company shall be under no obligation to use the services of the Supplier for any particular number of hours in respect of any Temporary Worker.
- 2.2 Upon receiving notification from the Company in accordance with clause 2.1 the Supplier will promptly use reasonable endeavours to introduce to the Company a suitable Temporary Worker to provide the Services.
- 2.3 If the Company confirms that it wishes to appoint the Temporary Worker introduced by the Supplier pursuant to clause 2.2 for an Assignment, the Company shall issue a purchase order to the Supplier detailing the period of the Assignment, the applicable fees as set out in the Work Purchase Orders and the commencement of the Assignment. The Company reserves the right to change its requirements under any purchase order or cancel it at any time before the commencement of the Assignment without any liability to the Supplier whatsoever, except for the payment of Fees due for services already performed. Such cancellation or amendment shall be effective immediately when the Company gives notice to the Supplier.

## **3. Obligations of the Supplier**

- 3.1 The Supplier shall ensure that before any Temporary Worker is Introduced to the Company that it has obtained confirmation of:-
- 3.1.1 the identity of the Temporary Worker and their willingness to provide the Services; and
  - 3.1.2 that the Temporary Worker has the experience, training, qualifications and any authorisation of which the Company has notified the Supplier, which the Company considers necessary, or which are required by law or by any professional body or customer (direct or indirect) of the Company, to provide the Services.
- 3.2 Where the Temporary Worker is required by law, or any professional body or customer (direct or indirect) of the Company, to have any qualifications or authorisation to provide the Services, then the Supplier shall: -
- 3.2.1 obtain copies of any relevant qualifications or authorisations of the Temporary Worker; and
  - 3.2.2 obtain two references from persons who are not relatives of the Temporary Worker, and who have agreed that the reference they provide may be disclosed to the Company
- PROVIDED that where the Supplier has taken all reasonably practicable steps to comply with this clause 3.2 and has been unable to do so, it shall confirm that it has been unable to do so in writing to the Company, setting out the steps that it has taken.
- 3.3 The Supplier shall ensure that before any Temporary Worker is Introduced to the Company that the Temporary Worker is eligible to work in the United Kingdom, and that the engagement of the Temporary Worker to provide the Services during the Assignment would not constitute a breach of the Asylum and Immigration Act 1996 and Immigration Asylum and Nationality Act 2006.
- 3.4 The Supplier shall provide the Company with all information it has been provided in respect of the information required above, and specify whether the Temporary Worker is self-employed or directly employed by the Supplier or engaged on any other type contract for service before any Introduction.
- 3.5 The Supplier will immediately notify the Company if any of the information provided by the Supplier in respect of a Temporary Worker is incorrect or inaccurate.
- 3.6 The Supplier shall procure that Temporary Workers are contractually obliged to comply with:
- 3.6.1 all relevant statutes, laws, regulations and codes of practice from time to time in force in the performance of an Assignment and applicable to the Company's business;
  - 3.6.2 The Company's health and safety policy whilst the Temporary Workers are on the Company's premises or any of the Company's customers' (direct or indirect) premises;
  - 3.6.3 The Company's Always Honest policy, whilst the Temporary Workers are on the Company's premises or any of the Company's customers' (direct or indirect) premises;
  - 3.6.4 The Company's Sustainability Policy, whilst the Temporary Workers are on the Company's premises or any of the Company's customers' (direct or indirect) premises; and

- 3.7 The Supplier shall at all times comply with all relevant statutes, laws, regulations and codes of practice from time to time in force relating to the Temporary Worker, including without limitation, the Regulations and the Working Time Regulations 1998.
- 3.8 The Supplier shall maintain in force public liability insurance to the value of at least £5 million pounds and shall on the Company's request produce both the insurance certificate giving details of the cover and the receipt for the current year's premium.
- 3.9 The Supplier shall maintain in force employers' liability insurance to the value of at least £5 million pounds and shall on the Company's request produce both the insurance certificate giving details of the cover and the receipt for the current year's premium.
- 3.10 The Supplier shall not and shall procure that Temporary Workers are contractually obliged not to (except in the proper performance of the Services) use or disclose to any firm, person or company (and shall use all reasonable endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to any use or disclosure authorised by the Company or required by law or any information which is already in, or comes into, the public domain otherwise than through the unauthorised disclosure of the Supplier or Temporary Worker.

## **4. Obligations of the Company**

- 4.1 The Company shall specify its requirements by providing details of the Services for which the Temporary Worker is required and, in particular, by notifying the Supplier of:
- 4.1.1 the date on which it requires the Assignment to commence;
  - 4.1.2 the position which the Company seeks to fill, including type of work, the location and the hours;
  - 4.1.3 any experience, training, qualifications and any authorisations which the Company consider reasonably necessary or which are required by law or by any professional body for such a Temporary Worker; and
  - 4.1.4 any expenses payable by or to the Temporary Worker.
- 4.2 The Company hereby undertakes to comply with all obligations, duties and regulations (whether statutory or otherwise) connected with the Services rendered by a Temporary Worker.
- 4.3 The Company shall exercise supervision, direction and control over each Temporary Worker carrying out work for the Company as appropriate (notwithstanding that the Temporary Worker is not in fact the Company's employee).

## **5. Direct Employment**

- 5.1 Before the start of any direct employment of a Temporary Worker by the Company, the Company will give notice to the Supplier that it wishes to extend the Assignment by a minimum of one month, with a view to subsequently employing the worker. Subject to 5.2 below, this will only occur in the event that the Temporary Worker has been Assigned to the Company for the previous 3 months. During the one month notice period the Supplier shall continue to supply the Temporary Worker to the Company on no less favourable terms than those which applied immediately before the notice was given. At the end of this period, no transfer fee shall be payable if the Temporary Worker is then directly employed by the Company.
- 5.2 In the event that the Company wishes to directly employ a Temporary Worker who has been Assigned to the Company for less than 3 months, the terms of such transfer will be agreed between the parties.

## **6. Unsatisfactory Temporary Worker procedure**

- 6.1 If the Company, in its sole discretion, decides that a Temporary Worker is unsuitable to perform the Services (an “Unsatisfactory Temporary Worker”), then the Company shall notify the Supplier of that fact giving the grounds for its dissatisfaction with the Unsatisfactory Temporary Worker.
- 6.2 If the Company notifies the Supplier of an Unsatisfactory Temporary Worker in accordance with clause 6.1:
- 6.2.1 within 48 hours of the commencement of the Assignment, then the Assignment will immediately terminate and no Fees shall be payable; and
  - 6.2.2 in all other cases, the Assignment shall terminate at the end of the day on which the Supplier was notified, and Fees shall be payable up to the date of such termination.

## **7. Time sheets**

- 7.1 The Company shall during the Assignment sign a time sheet verifying the number of hours worked by the Temporary Worker. If the Company is unable to sign a time sheet produced by the Temporary Worker because the Company disputes the hours claimed, the Company shall inform the Supplier to enable the Supplier to establish what hours, if any, were worked by the Temporary Worker.
- 7.2 It is acknowledged that the Company shall not decline to sign a time sheet on the basis that it is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable or unsatisfactory work the provisions of clause 6 shall apply.

## **8. Fees**

- 8.1 The Company shall pay the Fees and such reasonable travel and other expenses as may be agreed in advance between the Company and the Supplier and will not exceed Government guidance rates, subject to receipt by the Company of evidence of such expenses. VAT shall be paid in addition at the prevailing rate where and to the extent applicable.
- 8.2 All monies due under these Terms shall be paid by the Company within 30 days of receipt of the invoice from the Supplier.

## **9. Agency Workers Regulations**

- 9.1 Prior to the commencement of any work by a Qualifying Temporary Worker in relation to an Assignment, or by a Temporary Worker who during the course of work on that Assignment will become a Qualifying Temporary Worker, the Supplier shall notify the Company of this fact, and agree with the Company the applicable Fees, as set out in the Work Purchase Orders.
- 9.2 The Supplier shall procure that they and any other sub-contractor or intermediary will comply with their obligations under the AWR, including but not limited to providing any Qualifying Temporary Worker with the Relevant Terms and Conditions.
- 9.3 The Company shall at all times comply with its obligations under the AWR, including but not limited to providing any Temporary Workers with access to collective facilities and amenities and employment opportunities.
- 9.4 The Supplier will indemnify and hold harmless the Company and each Affiliate Company for any liability, cost, claim, award or any other expense incurred by it arising out of a breach or alleged breach by the Supplier, its sub-contractors or any other intermediaries of the AWR.

- 9.5 In the event that either party receives an allegation by any Temporary Worker that there has been a breach of the AWR in relation to the supply of that person to the Company by the Supplier, they shall provide a copy of that allegation to the other party within 7 days of receipt. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.
- 9.6 The Supplier will within 7 days of receiving a written request from the Company provide to it:-
- 9.6.1 the number of Temporary Workers currently being supplied to the Company;
  - 9.6.2 the parts of the Company's undertaking in which those agency workers are working; and
  - 9.6.3 the type of work those Temporary Workers are carrying out
- together with any other information which the Company may reasonably request in relation to any payments made by the Supplier, its sub-contractors or any other intermediaries to any Temporary Workers, in order to ensure compliance with the AWR.
- 9.7 The Supplier shall indemnify the Company for any breach of the AWR (including as to legal costs) to the extent that such breach has been caused by an act or omission of the Supplier.

## **10. Payments to Temporary Workers**

- 10.1 The Supplier shall, within all legal timeframe and by all applicable deadlines, pay each Temporary Worker for the performance of an Assignment, including without limitation, the payment of any fees or hourly rates and any other payments to which the Temporary Worker is entitled, including but not limited to holiday pay and sick pay.
- 10.2 The Supplier shall:
- 10.2.1 make deductions and account to the HMRC (or any successor body) for PAYE income tax and any other tax due in respect of the remuneration of each Temporary Worker; and
  - 10.2.2 make deductions and account for all necessary National Insurance contributions relevant to the remuneration of each Temporary Worker.
- 10.3 The Supplier shall not withhold any payment due to a Temporary Worker because of any failure by the Company to pay the Supplier.

## **11. Indemnities and Insurance**

- 11.1 The Supplier shall Indemnify the Company and any successor to the Supplier against all and any liability, deduction, contribution, assessment or claim:
- 11.1.1 for any National Insurance contributions (where not prohibited by law), income tax or other liability to taxation where such liability, assessment or claim arises or is made in connection with the performance of the Services, provision of any Temporary Worker or any payments made by the Company in respect of the performance of the Services or the provision of any Temporary Worker while provided as such by the Supplier to the Company;
  - 11.1.2 any costs, expenses, penalties, fines or interest incurred or payable by the Company in connection or in consequence of any liability under clause 11.1.1 above; or
  - 11.1.3 arising from any Temporary Worker having at any time claimed, or being held or deemed, to have been an employee of the Company or to have been otherwise

engaged directly by the Company, including against any liability arising from or in connection with any claim for wrongful or unfair dismissal or for a redundancy payment.

- 11.2 The Supplier shall ensure that any subcontractor or other intermediary shall at all times comply with their obligations under the AWR 2010, including providing any Qualifying Temporary Worker with the Relevant Terms and Conditions in accordance with regulation 5 of the AWR 2010.
- 11.3 The Supplier shall (to the extent applicable), shall ensure that it complies with the provisions of IR35. In the event that the provisions of IR35 apply or are alleged by HMRC to so apply in relation to any of the Temporary Workers' the Supplier shall not be entitled to charge the Fee or seek any other payment or compensation whatsoever as a result.
- 11.4 The Supplier shall at its own expense provide such prompt and diligent cooperation, information and assistance as the Company may from time to time require in order to comply with IR35 (or determine whether IR35 applies) or to establish the employment status for tax purposes of a Temporary Worker, including: preparatory work, assistance to enable the Company to complete and issue a status determination in accordance with IR35 and to any other persons in the chain of supply in respect of any Temporary Worker; assistance with queries and communications raised by or on behalf of any Temporary Worker; assistance with any appeal procedure pursuant to IR35 or as otherwise required by the Company from time to time and assistance with any determinations and communications with HMRC or appeals concerning any demands for tax or national insurance contributions.

## **12. General**

- 12.1 This Contract shall be governed by and construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with these Terms.

# SCHEDULE 1

## Definitions

In this Agreement, the following expressions have the following meanings:

Assignment	the period during which a Temporary Worker performs the Services for or on behalf of the Company or agreed between the Company and the Supplier, commencing at the time the Temporary Worker first reports to the Company to perform the Services and ending upon the cessation by the Temporary Worker of the Services;
AWR	the Agency Workers Regulations 2010;
Confidential Information	information (whether or not recorded in documentary form, or stored on any magnetic or optical disc or memory) relating to the business, products, affairs and finances of the Company for the time being confidential to the Company and trade secrets including, without limitation, technical data and know-how relating to the business and methods of working, pricing and pricing structure of the Company or any of its contacts or clients,
Fees	the fees payable in relation to a Temporary Worker;
Group Company	any person, firm or corporation, which is a subsidiary, associated or holding company or undertaking of the Company;
Initial Assignment	the first day on which the Temporary Worker worked for the Company pursuant to these Terms, no account should be taken of any work that occurred prior to a period of more than 42 days during which that temporary worker did not work for the Company pursuant to these terms;
Introduction	the interview by the Company of any potential Temporary Worker in person or by telephone following the Company's instruction to the Supplier to search for such a Temporary Worker and the terms "Introduce" or "Introduced" shall be construed accordingly;
IR35	the rules in Chapter 8 or Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003;
Month	a calendar month;
Other Qualifying Payments	any payment, overtime, shift premium, bonus, commission or other remuneration payable to a Qualifying Temporary Worker (other than their basic hourly rate), which is not excluded by virtue of Regulation 6 of the AWR, which would include, for example, any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Qualifying Temporary Worker and is not a



	financial participation scheme (as defined by the AWR);
Qualifying Temporary Worker	any Temporary Worker who at the relevant time is entitled to the rights conferred by Regulation 5 of the AWR and in particular has been provided to the Company or any Affiliate Company (whether by the Supplier or any third party) for the qualifying period as defined in Regulation 7 of the AWR subject always to Regulations 8 and 9 of the AWR, and in respect of whom the Supplier has complied with its obligations under clause 9.1, of this Agreement;
Regulations	the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
Relevant Period	at any time during: - <ul style="list-style-type: none"> <li>(a) the duration of an Assignment;</li> <li>(b) in cases where there was an Assignment of the Temporary Worker, any time before the later of 14 weeks from the commencement of the Initial Assignment or 8 weeks from the final day during an Assignment on which the Temporary Worker performed the Services;</li> </ul> <p>in cases where there was no Assignment, but there was an Introduction, 14 weeks from the date on which the Temporary Worker was first Introduced to the Company.</p>
Relevant Terms and Conditions	the relevant terms and conditions for any particular Qualifying Temporary Worker as defined in Regulation 6 of the AWR;
Services	the services as set out as more particularly described for each Temporary Worker on the Order;
Temporary Worker	any person who is Introduced or supplied by the Supplier to the Company with a view to carrying out the Services;
Unsuitable Temporary Worker	has the meaning given to it in Clause 5.1; and
Week	any 7 consecutive days.

References to statutory provisions include all modifications and re-enactments of them and all subordinate legislation made under them.