

PCG/ATSCo Contract Terms and Conditions

You are free to use this contract whenever its terms accurately match the real arrangements involving the client and end-user, the agent is a member of ATSCo for the duration of the engagement. However, do note that a condition of use is that the contract between the agent and end-user does not contradict this contract. This contract may not be used for non-ATSCo agencies.

For obvious reasons, there are restrictions on what you can change in the contract whilst retaining the “PCG/ATSCo contract” name. The following items may be changed at will:

- i) Payment terms and mechanics in Clauses 3.3 and 8.2.2, as long as nothing in the modified clause implies that payment will be made whether or not work is done.
- ii) The notice terms in Clauses 4.3 and 4.5
- iii) The period for return of confidential materials in Clause 11.1
- iv) The variation clause 12.4.2 may be included or excluded from the contract and the period changed from 14 days
- v) The limitation of liability in 10.1 will normally be the total value of the contract; however this figure may be amended
- vi) The amount of EL, PL and PI insurance in Clause 8.3.1 may be varied (or removed if there is no such requirement)
- vii) The Schedule, as long as nothing is written in to it which contradicts anything in the main contract

With regard to clause 3.4, which covers late payment, please note that the interest rate must be the Bank of England base rate plus 8%, (as specified in the Late Payment of Commercial Debts (Interest) Act 1998).

Should you need to make specific changes to other clauses, to retain the “PCG/ATSCo contract” name the changes must be cleared by PCG’s legal team. This takes a few days and is done on a cost-plus basis. It is envisaged that many agencies will want to have their own standard version of the contract and this mechanism is intended to enable that, though of course it can be used to bespoke the contract for specific engagements as well. As part of the confirmation you will receive a new version number for your version of the contract.

Finally, should your contractors still be nervous about IR35, we would encourage you to make them aware of the peace of mind offered the PAYE Audit Cover policy held by PCG for the benefit of its [PCGPlus](http://www.pcg.org.uk) members. Please see the website at www.pcg.org.uk for further information.

**PCG-ATSCo contract version A06-06
August 2006**

Agreement for the Supply of Services¹

This Agreement is made this [...] day of [...] 200...

BETWEEN

[.....], a company incorporated in England under number [...] and whose registered office is at [...] ("The Agent")

And

[.....], a company incorporated in England under number [...] and whose registered office is at [...] ("The Supplier")

WHEREAS

- (A) From time to time the Agent may wish to engage the Supplier to provide Services to one or more of its End-Users², and
- (B) Each time the Supplier agrees to supply Services to the Agent, these Services will be provided on the terms and conditions set out in this Agreement.

IT IS HEREBY AGREED THAT

1. Interpretation

- 1.1. Agreed Sum means the sum detailed in the Specification to this Agreement.
- 1.2. End-User means any third party who contracts with the Agent for the supply of Services.
- 1.3. Specification means the details of the Services set out in the Schedule to this Agreement and in accordance with Clause 5.1 below.

¹ This is for services to be provided by the company and not for services to be provided by any particular individual. This emphasises the fact that this is a business-to-business agreement to carry out a piece of work, rather than one for the supply of an individual.

² There is a view that the Agent could be the 'client' for the purposes of the IR35 legislation. If this argument can be sustained, it would make IR35 harder to apply. The use of the term 'client' has thus been avoided in these documents.

- 1.4 Supplier means the company supplying the Services in accordance with the Specification.
- 1.5 Supplier's personnel includes the Supplier's employees, sub-contractors, agents and substitutes as appropriate.
- 1.6 Services means the services set out in the relevant Specification.

2. Agreement

- 2.1 This Agreement is a contract for services between the Agent and the Supplier and governs the performance of the Services by the Supplier for the Agent.³
- 2.2 The Supplier shall, subject to the terms of this Agreement, ensure that its personnel perform the Services detailed in the Specification.
- 2.3 The Supplier shall invoice the Agent for the Agreed Sum.
- 2.4 The Agent is under no obligation to offer work to the Supplier and the Supplier is under no obligation to accept any work which may be offered by the Agent. Neither party wishes to create or imply any mutuality of obligation between themselves either in the course of, or between, any performance of Services under the Specification.⁴

3. The Agreed Sum

- 3.1 The Agreed Sum shall be [as][the sum] detailed in the Specification, and it will be exclusive of any VAT which may be chargeable.
- 3.2 The Supplier shall submit invoices in the agreed form to the Agent as detailed in the Specification to this Agreement.⁵
- 3.3 Unless otherwise specified in the Schedule(s), the Agent agrees to meet the Supplier's invoices in full within 14 days of receipt. However should the Supplier fail to supply timesheets within 14 days from the end of the period they reference,

³ The Conduct of Employment Agencies and Employment Businesses Regulations 2003 ("CEAEB Regulations") require that you state expressly on what basis the Supplier is engaged.

⁴ This is an explicit statement that there is no mutuality between the Agent and the Supplier. This does not mean that there is necessarily no mutuality in the hypothetical contract between the End-User and the worker, but it is a helpful indicator. The lack of a notice clause (see footnote 6) may help remove MOO between the End-User and the worker.

⁵ The Specification must address the frequency with which invoices are to be rendered and on what basis - e.g. completion of milestones or after a set number of hours. Issuing invoices is an indicator of the 'in business on own account' test.

payment is not due until 30 days from the time the timesheets are received by the Agent.⁶

- 3.4 The Agent undertakes to make payment to the Supplier regardless of whether the Agent has received payment from the End-User for the sum being claimed⁷ and other than deductions required by law, the Agent shall pay all sums due to the Supplier without deduction.⁸
- 3.5 If the Supplier is unable for any reason to provide the Services no payment shall be made by the Agent in respect of any period that the Services are not provided.
- 3.6 In the event that the Supplier is unable to produce a signed timesheet, the Agent shall be entitled to withhold payment for such period as is reasonable to enable the Agent to make reasonable enquiries to verify the hours worked by the Supplier (Provided that payment shall not be withheld for longer than [30] days after the Supplier notifies the Agent that it is unable to produce a signed timesheet).⁹
- 3.7 The Supplier is entitled to charge interest to the Agent on any outstanding amounts at the rate of [...%] under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest will begin to accrue from [.....][30 days after the date agreed for payment under this Agreement] and will continue to accrue until judgment or sooner payment.¹⁰

4 Duration and Termination

- 4.1 This Agreement shall commence from the date hereof and shall remain in force until terminated. The terms of this Agreement shall apply whenever the Supplier agrees a Specification with the Agent.
- 4.2 The Agent may, at any time before the Supplier is put forward to an End-User, withdraw a Specification from the Supplier forthwith. This will not terminate this Agreement as between the Agent and Supplier.

⁶ Whilst the Agent can withhold payment pending receipt of timesheets, it must not withhold or threaten to withhold any payment in respect of work done by the Supplier on the grounds that the Supplier fails to produce documentary evidence authenticated by the End-User (e.g. signed timesheets) of the fact that the Supplier worked during a particular period of time. However, this does not prevent the Agent from satisfying itself by other means that the Supplier worked the particular period in question (i.e. withholding payment temporarily pending further enquiries).

⁷ The CEAEB Regulations prohibit withholding payment to the Supplier on the grounds that the Agent has not received payment from the End-User (Regulation 12). In addition, the contract must contain an undertaking that payment will be made to the Supplier whether or not payment has been received from the End-User.

⁸ The CEAEB Regulations require all payments to be made without deduction, save as required by law.

⁹ Under regulation 12, an employment business cannot withhold payment on the grounds that the worker cannot produce a signed timesheet

¹⁰ This should be mirrored in the End-User/Agent agreement so that if the delay is due to the End-User, the Agent can pass the cost on.

- 4.3 Either party shall be entitled to terminate this Agreement forthwith by giving [.....] written notice to the other in the event that:
- 4.3.1 either party is in breach of this Agreement and fails to remedy such breach (if capable of remedy) within [.....] of receiving written notice from the other party to do so;
 - 4.3.2 the other party goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or members or has a receiver or administrator appointed.
- 4.4 The Agent may terminate any Specification or the Agreement forthwith if in its opinion it is no longer appropriate for the Specification to continue in force.¹¹
- 4.5 The Supplier may terminate this Agreement by giving [1 months] [reasonable] notice in writing.

5 Agent's Obligations

- 5.1 The Agent will ensure that the Specification includes the following detail as a minimum:
- 5.1.1 the identity of the End-User and the nature of the End-User's business;
 - 5.1.2 the Services which the Supplier will perform;
 - 5.1.3 the minimum training, qualifications, experience and any authorisations required by law and/or a professional body which the End-User considers necessary or which are required by law to perform the Services;
 - 5.1.4 the rate to be paid by the Agent for each of the Supplier's personnel;
 - 5.1.5 any disbursements payable;
 - 5.1.6 the required commencement date of the Services;
 - 5.1.7 the expected duration of the Services; and
 - 5.1.8 where the Services might be performed.

¹¹ If this contract can be terminated at any point by either/or both parties there is arguably no mutuality of obligation, and if this is the case IR35 cannot apply. In this draft contract the Agent is given power to terminate both the Agreement and Specification without notice (see Clauses 4.2 and 4.4). The right to terminate the Specification without notice is then reflected in the agent/End-User contract (at clause 4.3) where the End-User has this power. Commercially the End-User/agent will usually require a notice period from the Supplier and this is reflected in clause 4.5 (as regards the Agreement) and in the Schedule (as regards the Specification). The Users of the contract should consider however the commercial consequences of the End-User/Agent having no notice period.

- 5.2 The Agent shall only pass the Supplier's details on for consideration by the End-User where the Supplier has consented.
- 5.3 The Supplier shall retain responsibility for the Supplier's personnel. In particular, the Agent acknowledges, and shall require that the End-User acknowledges, that the Supplier's personnel are professionals who will use their own initiative as to the manner in which the Services are delivered and will not be subject to, or to the right of, direction or control as to the manner in which they render those Services.¹²

6 Agent's Role

- 6.1 For the purposes of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, the Agent shall supply the Supplier with the services of an employment business.¹³
- 6.2 The Agent is responsible for meeting the Supplier's own invoices promptly.
- 6.3 In the event that the End-User reports its dissatisfaction with the Supplier to the Agent, the Agent shall report this forthwith and may require the Supplier to take whatever reasonable steps are necessary to remedy the situation at the Supplier's own expense. If the situation is not capable of remedy, or the Supplier does not perform such corrections in a timely manner, the Agent may terminate the Supplier's agreement forthwith.
- 6.4 The Agent warrants that it shall make all reasonable enquiries and that;
 - 6.4.1 to the best of its knowledge it shall not provide details to the Supplier of assignments with End-Users where the placement is to perform the duties of a person on official strike or taking part in other official industrial action¹⁴;
 - 6.4.2 it shall know of no reason why it would be detrimental to the interests of the Supplier or the End-User for the Supplier to perform the Services¹⁵; and
 - 6.4.3 it shall inform the Supplier of any risks to health and safety in the performance of the Services and the steps taken to prevent and/or control those risks¹⁶.

¹² Control is a key indicator of employment. It is therefore important to minimise the control exercised by the End-User/Agent over the work performed by the Supplier's personnel.

¹³ The CEAEB Regulations require that the contract provides whether the Agent is acting as an "Employment Agency" or an "Employment Business". Generally an Employment Agency introduces contractors to End-Users for direct employment (i.e. "permanent placements"), whereas Employment Business engage contractors for temporary placements with End-Users (i.e. "temps").

¹⁴ See regulation 7

¹⁵ see regulation 20;

¹⁶ See regulation 18

7 Agent's Agreement with the End-User

- 7.1 The Agent shall conclude an agreement with each End-User, which reflects the relevant terms of this Agreement. In particular, the Agent's agreement with the End-User shall include (without limitation):
- 7.1.1 details of the Specification agreed with the Supplier;
 - 7.1.2 a termination clause allowing the End-User to bring the Specification to an end without notice, in line with the powers of the Agent in Clause 4 above;
 - 7.1.3 a confidentiality clause in the form of Clause 11 below;
 - 7.1.4 a substitution clause in the form of Clause 8.4 below;
 - 7.1.5 a Conflict of Interest clause acknowledging that the Supplier may be engaged by a third party during the currency of the Specification, so long as no such engagement conflicts with the time requirements or other requirements of, or in any way otherwise prevents delivery of services under, this agreement¹⁷

8 Supplier's Obligations

- 8.1 The Supplier warrants to the Agent:
- 8.1.1 that the individual(s) supplied to perform the Services possess the required knowledge, expertise, experience, skills, qualifications and any authorisations required by law or a professional body necessary to perform the Services (as detailed in the Specification) and shall provide such information about or evidence of that knowledge, expertise, experience, skills, qualifications or authorisations as the Agent shall require;¹⁸
 - 8.1.2 that the individual(s) supplied to perform the Services are willing and able to do so;
 - 8.1.3 that it is aware of all and any legal and/or professional requirements that must be satisfied in performing the Services;¹⁹

¹⁷ This gives the right to concurrent contracts, which is an indicator of self-employment.

¹⁸ The CEAEB Regulations require Agents to obtain information of the Supplier's experience, training, qualifications and any authorisations which the End-User considers are necessary or which are required by law or a professional body to work in that position (regulation 19). This information must be passed on to the End-User at the same time as it proposes a Supplier to an End-User.

¹⁹ The Agent must not introduce or supply a Supplier to an End-User unless the Agent has taken all reasonably practicable steps to ensure that the Supplier is aware of any requirements imposed by law or a professional body to carry out the position for the End-User. This warranty does not satisfy that obligation in itself, particularly as failing to comply with the CEAEB Regulations can result in criminal liability, which cannot be passed onto the Supplier by means of a contractual term. However, this warranty creates a contractual obligation from the Supplier to the Agent.

- 8.1.4 that it knows of no reason why it would be detrimental to the interests of the End-User for its personnel to perform the Services;²⁰ and
- 8.1.5 that it can meet the requirements of the Specification.
- 8.2 If either before or during the course of performing the Service the Supplier becomes aware of any reason why the individual(s) supplied to perform the Services may not be suitable, the Supplier shall notify the Agent without delay.²¹
- 8.3 The Supplier shall in performing the Services:
 - 8.2.1 comply with the Specification unless agreed otherwise in writing in accordance with 12.4 below;
 - 8.2.2 submit [weekly][daily] timesheets agreed by the End-User to the Agent to provide a record of the work done by the Supplier's personnel.²²
- 8.3 The Supplier shall, if required:
 - 8.3.1 ensure that its valid and adequate Public and Employer's Liability Insurance and Professional Indemnity Insurance remains in force throughout the duration of the Specification;²³ and
 - 8.3.2 subject to the provisions of clause 5.3 above, ensure that the Supplier and the Supplier's personnel comply with any relevant legislation or regulations relating to the Specification or the working environment such as health and safety regulations or similar requirements.²⁴
- 8.4 The Supplier shall have the right to supply one or more substitutes of equivalent expertise to work in place of the original personnel. The Supplier acknowledges that the End-User has the right, under its contract with the Agent, to refuse to accept the

²⁰ As for clause 8.1.3, the Agent is required to ensure that it is not detrimental to the interests of the Supplier for the Supplier to work for the End-User i.e. the position the End-User seeks to fill (Regulation 20 (1)(b)).

²¹ Regulation 20 (2) requires the Agent to end the supply of the Supplier to the End-User where it receives or obtains information giving reasonable grounds for the belief that the Supplier may be unsuitable for the position with the End-User. Again, this clause does not relinquish the Agent's duties under the CEAEB Regulations, but puts a degree off contractual obligation on the Supplier to assist the Agent in its obligation under the Regulations.

²² This clause is optional, and will not be appropriate if the engagement is on a project basis. However the fact that timesheets are completed should not be a material factor in assessing whether the assignment falls within or outside IR35.

²³ Another indicator of self-employment

²⁴ These obligations are no more than would be expected of self-employed workers on the End-User's site.

substitute personnel if in the reasonable view of the End-User, the substitute personnel have insufficient qualifications or expertise to carry out the Specification.²⁵

- 8.5 Where substitution occurs, the other terms and conditions of this Agreement and the Specification, and in particular (but not limited to) the rate to be paid for the personnel will remain unchanged, unless adjusted in accordance with 12.4 below. For the avoidance of doubt, the Supplier shall be responsible for the payments and disbursements of the substitute personnel.²⁶
- 8.6 In the event that the Supplier cannot provide either the original personnel or acceptable substitute personnel, the Agent is entitled to terminate this Agreement forthwith.²⁷

9 Warranties

- 9.1 The Supplier warrants that it will provide complete, accurate and up to date details regarding the Supplier's expertise, experience, training, qualifications and authorisations (if any) necessary to carry out the Services.
- 9.2 The Agent warrants to the Supplier that any agreement between the Agent and the End-User reflects the terms of this Agreement and the Specification in all material respects.
- 9.3 The Supplier warrants that it will, when utilising any of its own equipment or intellectual property in carrying out the engagement, ensure that any security requirements reasonably required by the End-User are complied with.²⁸
- 9.4 The Supplier warrants that any intellectual property rights of whatever nature and whether registered or not, which may be created by the Supplier in the course of performing the Specification, will be transferred from the Supplier to the End-User.

10 Limitations²⁹

- 10.1 Except in respect of death or personal injury caused by the negligence of the Supplier or by the Supplier's personnel, or as expressly agreed in writing between

²⁵ A valid substitution clause means that personal service does not have to be supplied, and thus IR35 cannot apply. It is not necessary for a substitute actually to have been provided, but the right to do so must exist. The right to reject an unsuitable substitute does not invalidate the effectiveness of the clause.

²⁶ It is critically important that the Supplier remains responsible for the work of the substitute and that the Supplier pays the substitute.

²⁷ See comment on 4.4.

²⁸ This implies a right to use own equipment, another indicator of self-employment.

²⁹ These clauses set out the extent to which the Supplier can be held liable to the Agent and vice versa. It demonstrates that the Supplier is running a commercial risk which is another indicator of self-employment.

the parties, the entire liability of the Supplier under or in connection with this Agreement shall not exceed e.g [100,000 per annum].

10.2 The Agent puts the Supplier forward for the End-User's consideration in all good faith and therefore cannot be held to be responsible to the Supplier for any misrepresentations or misleading information provided by the End-User concerning the qualifications or experience required of the Supplier for the Specification.

10.3 The parties agree³⁰ that neither party may be held to be liable to the other in respect of:

10.3.1 any delay, loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied to the Agent by the End-User which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival or any other fault of the End-User;

10.3.2 any loss, damage, costs, expenses or other claims for compensation arising from the End-User making use of the Supplier's services for any purpose not clearly disclosed to the Supplier in the Specification or from the End-User allowing a third party to make use of the Services provided by the Supplier;

10.3.3 any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or other than under the express terms of this Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Agent or Supplier, their servants or agents or otherwise) which arises out of or in connection with the performance of the Specification by the Supplier or its use by the End-User .

11 Confidentiality

11.1 Both parties will take all reasonable steps to ensure that any documents or other materials and data or other information which are supplied to the other party under this Agreement and are clearly marked as confidential remain confidential to the parties. Such information will only be made available by the parties to those of their personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties except for professional advisers in confidence or if required by law. Either party is entitled to demand the return of all copies of any such documents or other materials and data or other information within [.....] by giving the other party written notice.

11.2 This obligation of confidentiality will remain in force beyond the cessation or other termination of this Agreement.

11.3 On the cessation or earlier termination of this Agreement, each party shall return to the other all documents or other material containing the Confidential Information.

³⁰ Note that these limitations only apply as between the Agent and the Supplier.

- 11.4 This clause shall not apply to any documents or other materials and data or other information which are already in the public domain at the time when they are provided by either party, and shall cease to apply where either party is required by law to make a disclosure or if at any time the information becomes public knowledge through no fault of the other party.
- 11.5 Both parties undertake that any information which is received from the other party under this Agreement will only be used for the purposes of this Agreement.

12 General

- 12.1 The relationship between the parties is one between independent businesses acting at arms length, and nothing contained in this Agreement shall be construed as constituting or establishing any partnership or joint venture or relationship of employer and employee between the parties or their personnel.³¹
- 12.2 The Agent shall not be liable to the Supplier or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Agent's obligations under this Agreement, if the delay or failure was due to any cause beyond the Agent's reasonable control.
- 12.3 The terms of this Agreement represent the entire agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise.
- 12.4 The terms of this Agreement or of any Specification provided under this Agreement (other than as set out below) may only be varied where the variation is recorded and agreed in writing by both parties.³²
 - 12.4.1 For the avoidance of doubt, the Supplier may change the personnel carrying out the Services in accordance with 8.4 above.

³¹ This makes explicit the nature of the relationship between the parties to the contract and is a requirement of the CEAEB Regulations.

³² The purpose of this clause, from an IR35 perspective, is to help protect against changes being made which undermine the key provisions of this contract. The danger is that the End-User and the Supplier will shift the arrangements described in the contracts, and these new arrangements will not reflect the key clauses of the contracts which protect against IR35.

[12.4.2 The nature of the Services to be supplied, their timing and location may be changed by agreement in writing between the End-User and the Supplier, providing only that the Agent is informed of such a change within 14 days];³³

- 12.5 Both parties agree that the terms of this Agreement are fair and reasonable in all the circumstances.
- 12.6 It is agreed that this Agreement will be governed and construed according to the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts.
- 12.7 For the avoidance of doubt, this contract is nonexclusive and the Supplier is free to make concurrent supply to other clients during its execution

_____ (for and on behalf of [the Agent])

_____ Print Name

_____ (for and on behalf of [the Supplier])

_____ Print Name

_____ (Date)

³³ Commercially, the Agent will probably want to be informed of some changes to the Specification (eg location) and agree others (eg fees). The subclause in brackets aims to achieve this. It should however be noted that there is an argument that IR35 may not apply if it can be shown that the Supplier is providing services for the business of the Agent. Although this is a minority view among professional advisers, obtaining the agreement of the Agent to any changes would be a part of that argument. If this argument was considered by the parties to have weight, then they would want all changes to be agreed with the agency and the subclause in brackets may not be appropriate.

Schedule

The specification

End-User:

Nature of End-User's business:

Minimum training, qualifications, experience and authorisations (if any) required from each of the Supplier's personnel working on this engagement:

Services to be performed³⁴:

Commencement date of Services:

Where services will be performed³⁵:

Agreed rate & Frequency of payment:

Disbursements:

Supplier Contact:

Notice period to be given by supplier (if any).³⁶

³⁴ The specification of services to be performed should be as "project-based" as practical and couched in terms of clear deliverables. The boundaries between what is and what is not required should be clearly stated.

³⁵ The specification of "where services should be performed" should include all locations where work might be carried out. Typically, this will include the end-user's site and the service provider's own offices.

³⁶ See note on MOO above. If there is no notice period there is arguably no mutuality. However it is thought that the lack of a notice period can be on one side only. This contract is designed to give the End-User the right to terminate the contract without notice; but it is assumed that the supplier will be required to give notice. If neither party is required to give notice, this will be at least as effective in tax terms, but may be less commercially acceptable.

Any other special provisions:

Start date for provision of services

End date for provision of services, or expected duration

This Schedule forms an integral and binding part of the Contract signed between the Agent and Supplier

Signed

_____ (for and on behalf of Agent)

_____ Print Name

_____ (for and on behalf of Supplier)

_____ Print Name

_____ (Date)

The Supplier may access the PCG Standard Contract Verification System from the PCG website www.pcg.org.uk to verify that the contract matches the standard and that this use of it has been registered.