

CONFIRMATION OF TERMS AND CONDITIONS WITH YOUR CLIENT

The Inland Revenue would very much like to see all the documents in place between you and the client and they also seek confirmation of the arrangements in place or if you like how things work in reality. Where there is an agency in the chain they particularly want to see a copy of any contract in place between the agency and the client (the end-user). It is not always possible for you to obtain this contract and in our experience most agencies refuse a request from you not least because you would then be able to see the rates they are charging for your services! Many end-users see these requests as a burden on their business and if you are coming up for a renewal it really is not in your interest to be seen as a burden. The Revenue has now recognised that it may not be possible however desirable to obtain these documents or in fact anything at all from the end-user. However the Special Commissioners have made it clear that they require evidence from the end-user in all IR35 cases before they will hear them.

To this end it is far better for you to obtain some kind of confirmation of the arrangements now whilst the contract is running and whilst there is an appropriate person who can comment on behalf of the client. Remember that the Revenue can go back 6 years and even now if you undertook a six month contract back in April 2000 it is unlikely that there is anyone at the clients premises who can comment on the day-to-day operation of your contract.

The following points are deliberately set out in a way to make it easy for your client representative to complete. You may wish to customise this to account for particular strengths in your working arrangements or if your contract is strong you may simply be able to put "see contract – clause 8". Some of these points have been taken directly from the Revenues preferred "confirmation of arrangements" document.

You need to consider carefully who is the best person to complete this? If you are providing services to a multinational PLC it is likely that they will want their legal department to deal with such a document. Clearly legal departments have little to do with the running of projects. Where an agency is involved some PLC's are simply saying that it is the agencies job to deal with these issues, as that is why they appointed an agency in the first place. We have won a number of IR35 cases where this has happened and the agencies have been very helpful. We have also won cases where the entire project has been worked by contractors so the only people able to confirm the arrangements were contractors!

And finally **KEEP RECORDS!** If you have the opportunity to send a substitute then get letters confirming the details. You should invoice your client/agency for payment and there should be invoices between you and the substitute. Make a note of unusual hours or if say everyone had to leave the site recording the fact that you were not paid. Make a record of when you worked from home even if you made no charge.

CONFIRMATION OF WORKING ARRANGEMENTS

1. Name of person, firm or company providing services.....
2. The precise nature of the services provided.....
3. The date when the engagement began / begins:, and the date when it is expected to be completed:
4. If there is a requirement for the work to be done by a specific individual, the name of that person:
5. Should the person named at 4 above be unavailable, does the service provider have an obligation to provide a replacement worker at the service provider's own expense? Yes / No.
6. Does the service provider have the right to undertake work using any workers of the service provider's own choice, and at the service provider's own expense, provided the workers concerned have the requisite skills? Yes / No.
7. Does the service provider have the right to subcontract the services to another person, firm or company, provided the subcontractor has the requisite skills? Yes / No.
8. What is the basis of payment? Wage or salary / commission / fixed price / hourly rate / daily rate / if other please specify.....
9. The location(s) at which the services are provided:
10. Does the service provider have the right to provide the services at or from a place of the service provider's own choice? Yes / No.
11. If the services have to be provided at a place decided by the customer or client, the reasons are:
12. Does the customer or client have the right to instruct the service provider to do other work not included in the services described at 2 above? Yes / No.
13. How are the working hours decided? By the service provider / by the customer or client / by mutual agreement.
14. Does the customer or client have the right to instruct the service provider about working methods? Yes / No.
15. The nature of any rules or procedures governing the customer or clients own workforce that also apply to the service provider:
16. The nature of the equipment that has to be supplied by the service provider

17. The nature of equipment that has to be supplied by the customer or client
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18. Does the service provider have an obligation to compensate the customer or client for any damage or loss caused by the service provider's negligence? Yes / No.

19. Does the customer or client expect the service provider to rectify any defective work at the service providers own expense? Yes / No.

20. Does the customer or client prevent the service provider from doing work for other customers or clients during the course of the engagement? Yes / No.

21. The nature of any benefits provided to the customer or clients own employees that are made available to the service provider:

22. If there is no work available is the customer or client obliged to find work for the service provider to carry out? Yes / No

23. If there is no work available would there be an obligation to pay the service provider? Yes / No

Signed on behalf of the customer or client:

Name:

Position.....Date.....

Signed on behalf of the service provider:

Name:

Position:Date.....