

## Terms for the Introduction of Permanent Candidates

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### 1. Acceptance of Terms

- 1.1 These terms set out the agreement between the Agency and the Client for the supply of Candidates by the Agency to the Client. For the purposes of the Conduct Regulations 2003, the Agency acts as an employment business in relation to the Introduction and supply of Candidates pursuant to this agreement.
- 1.2 The Client will be deemed to have accepted and agreed to these Terms and Conditions, (which will prevail over any other terms and conditions put forward by the Client), when any of the following events occurs:
- (a) the Client requests the Agency to Introduce a Candidate for any position; or
  - (b) the Client, or a third party acting on the Client's behalf, interviews a Candidate; or
  - (c) the Client Engages a Candidate in any capacity; or
  - (d) a Candidate begins work for the Client in any capacity; or
  - (e) the Agency provides any of the Recruitment Services to the Client.
- 1.3 These terms apply to the exclusion of any other terms that the Client may seek to impose or incorporate, or which could or are implied by trade, custom, practice or course of dealing. They apply irrespective of whether their formation now is contrary to the Client's internal policies and procedures as such internal compliance requirements have no bearing on the formation, performance or applicability of these terms.
- 1.4 The parties shall convene regularly to review the services provided by the Agency. Any resulting changes agreed to the services, remuneration or any other aspect of the agreement shall be of no effect unless confirmed in writing.

## AGREED TERMS

### 2. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 2.1 Definitions

<b>Affiliate</b>	means in relation to a Party, any person that Controls, is Controlled by, or is under common Control with that Party.
<b>Agency</b>	Unicus Global Ltd incorporated and registered in England and Wales with company number 15853250 whose registered office is at Chycarne Kuggar, Ruan Minor, Nr Helston, Cornwall TR12 7LX.
<b>Agreed Purposes</b>	the provision and receipt of the Recruitment Services and the payment and receipt of the Introduction Fee.

<b>Agreement</b>	means the agreement containing these Terms and Conditions.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Candidate</b>	means a person Introduced by the Agency to the Client to be considered for an Engagement.
<b>Client</b>	means any person, firm or company who approaches the Agency with a view to Engaging or otherwise employing a Candidate, or any person, firm or company to whom a Candidate is Introduced by the Agency.
<b>Commencement Date</b>	has the meaning given in clause 3 (Term).
<b>Control</b>	means in relation to a Party, direct or indirect beneficial ownership of more than 50% of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be.
<b>Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures</b>	as set out in the Data Protection Legislation in force at the time
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Engage(s) (or Engagement or Engaged)</b>	means the employment, hire or other use, directly or indirectly and whether under a contract of service or contract for services or otherwise, and/or whether on a permanent, temporary or other basis, of a Candidate by or on behalf of the Client, and Re-engages is to be interpreted accordingly.
<b>Further Candidate</b>	means a person Introduced by the Candidate to the Client to be considered for an Engagement.
<b>Introduce (or Introduction)</b>	means the provision to the Client of information by the Agency whether by way of a curriculum vitae or in any other such format, whether written or oral, as the Client may from time to time require which identifies the Candidate and whether or not the Client had knowledge of that Candidate before the Introduction; Introduction and Introduced shall be construed accordingly.
<b>Introduction Fee</b>	means the Introduction fee calculated according to the Schedule.
<b>Parties</b>	means the Agency and the Client, and Party will mean either one of them.

<b>Permitted Recipients</b>	the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.
<b>Receiving Party</b>	has the meaning given in clause 7.
<b>Recruitment Services</b>	means conducting searches for Candidates for vacancies that the Client has notified to the Agency and Introduction of them to the Client by the Agency.
<b>Regulations</b>	means the Conduct of Employment Agencies and Agency Regulations 2003 (SI 2003/3319).
<b>Shared Personal Data</b>	the personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the categories of information envisaged by clause 4.4(c) and where a Candidate accepts an offer of employment from the Client or commences an Engagement by a Candidate, the parties shall share personal data relevant to such employment or Engagement including details of the Candidate remuneration.
<b>Supplying Party</b>	has the meaning given in clause 7.
<b>Termination Fees</b>	has the meaning given in clause 10.2.
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>Vulnerable Persons</b>	has the meaning given in regulation 2 of the Conduct Regulations 2003.

### 3. Term

- 3.1 This agreement shall commence on the date it is sent by the Agency to the Client (**the Commencement Date**) and shall continue, unless terminated earlier in accordance with clause 10 (**Termination**) until either party gives to the other party 30 Business Days' notice to terminate.

### 4. Recruitment Services

- 4.1 The Agency will provide the Recruitment Services to the Client in consideration for the Client's paying the applicable Introduction Fee to the Agency, subject to the terms and conditions of this Agreement.
- 4.2 The Agency will use reasonable endeavours to Introduce to the Client a Candidate suitable to carry out work of such nature as the Client notifies to the Agency. The Agency does not represent, warrant or undertake to find a suitable or any Candidate for each vacancy notified to it by the Client.
- 4.3 When Introducing a Candidate to the Client for employment, the Agency is acting as an employment agency as defined in the Regulations.

- 4.4 The Agency will:
- (a) ensure that any Candidate has given his consent for his details to be submitted for any vacancy for which they are submitted;
  - (b) once a Candidate has been Introduced, provide the Client full access to the Candidate's details that are held by the Agency; and also authorise the Client to contact the Candidate directly, at any stage of the recruitment process, and without requiring the prior permission or knowledge of the Agency;
  - (c) at the Client's request supply to the Client copies of:
    - (i) any relevant qualifications or authorisations, and
    - (ii) any non-confidential references,in the Agency's possession, except where the Agency is not permitted to obtain, verify or disclose them.

4.5 The Parties do not anticipate that any Engagement will involve working with any Vulnerable Persons.

4.6 Where another agency submits details of the same Candidate to the Client after the Agency has already done so, in the event of any Engagement the Agency will be deemed to have Introduced the Candidate to the Client and the subsequent submission of the same Candidate's details by the other agency shall be disregarded.

4.7 If the Agency submits details of a Candidate to the Client, where another agency has already submitted details of the same Candidate, the Agency will be deemed to have Introduced the Candidate to the Client and, if the Client Engages that Candidate in any capacity, no fees or charges of any kind will be payable to any agency other than the Agency.

4.8 By requesting the Agency to Introduce Candidates for a vacancy, the Client authorises the Agency to advertise such a vacancy, and the Client grants to the Agency, or shall procure the direct grant to the Agency of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to copy, modify use the Client's name or any of its logos or trademarks for the purpose of delivering the Recruitment Services, provided that the Agency shall not sub-license, assign or otherwise transfer the rights granted in this clause.

4.9 The Client accepts liability for any advertising, promotional or marketing costs incurred by the Agency which will be invoiced in advance in accordance with Clause 5.6.

4.10 For the duration of this agreement and for a period of six years from the termination or expiry of this agreement, the Agency shall maintain full and accurate records of the services provided by the Agency under this agreement including how it has complied with its obligations under the Regulations.

## **5. Fees and payment**

5.1 The Client will pay an Introduction Fee to the Agency in respect of each Candidate Engaged by the Client. The Introduction Fee will be calculated as set out in the Schedule.

- 5.2 The Introduction Fee will become due immediately when a Candidate accepts an offer of a post.
- 5.3 The payment of the Introduction Fees will be made by the Client to the Agency within 14 days of the date of the Agency's invoice.
- 5.4 The Introduction Fee charged for the Introduction of any Candidate for an Engagement is applicable for one Engagement only. For each additional Candidate Introduced by the Agency and Engaged by the Client, a further Introduction Fee will be payable.
- 5.5 The Introduction Fees are for the Introduction of Candidates only and do not include any salary due to any Candidate. Unless the Candidate is self-employed, it is the Client's responsibility to account for any tax and national insurance contributions attributable to the Candidate.
- 5.6 Any charges for advertising, and all other charges, will be invoiced separately in writing before the advertisement is placed and will be payable irrespective of whether a Candidate is Engaged.
- 5.7 If, after an offer of employment has been accepted by a Candidate, the Client withdraws the offer, the Client will be liable for a cancellation fee of 50% of the Introduction Fee or for the Termination Fees, whichever is greater.
- 5.8 If, following a Candidate's unsuccessful application to the Client via the Agency either:
- (a) the Client, without notifying the Agency, Engages that Candidate in any capacity within 18 months of the Agency's having Introduced a Candidate to the Client, or
  - (b) the Client or the Client's employee, agent or subcontractor refers or Introduces that Candidate to a third party, including an Affiliate of the Client, and that third party Engages the Candidate in any capacity within 18 months of the Agency's having Introduced a Candidate to the Client,
- then the Client will be liable for an Introduction Fee as set out in the Schedule.
- 5.9 If a Candidate leaves the Client's employment for any reason apart from redundancy, provided that the Client informs the Agency in writing of the termination of employment with 7 days of it taking place:
- (a) if the Candidate leaves the Client's employment within 8 weeks of having commenced employment, the Agency will Introduce a free replacement Candidate or, where it is unable to do so, it will rebate 100% of the Introduction Fee paid by the Client;
  - (b) if the Candidate leaves the Client's employment between 8 and 13 weeks after having commenced employment, the Agency will rebate 50% of the Introduction Fee paid by the Client,
- provided that if the Client Re-engages the Candidate within 18 months of the Introduction, the Client will repay any rebated payment to the Agency.

- 5.10 If, once the Agency has started to perform the Recruitment Services, the Client provides notice to terminate this agreement under clause 3.1, the Agency shall immediately suspend the provision of the Recruitment Services and the Client shall become liable for the Termination Fees.
- 5.11 All amounts stated are exclusive of VAT and any other applicable taxes, which will if applicable be charged in addition at the rate in force at the time the Client is required to make payment.
- 5.12 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms and Conditions, the Agency will be entitled:
- (a) to charge interest (both before and after any judgment) on the outstanding amount at the rate of 10% a year above the base lending rate of the Bank of Scotland from time to time, but at 10% a year for any period when that base rate is below 0%, accruing daily from the due date until payment of the overdue sum;
  - (b) to require the Client to pay, in advance, for any Recruitment Services (or any part of the Recruitment Services) which have not yet been performed; and
  - (c) not to perform any further Recruitment Services (or any part of the Recruitment Services).
- 5.13 Once interest starts to run, the Agency shall be entitled to a fixed sum in addition to the interest on the debt under Section 5A(2) of the Late Payment of Commercial Debts (Interest) Act 1998 as follows:
- (a) **Debt below £1,000:** fixed sum £40.
  - (b) **Debt at least £1,000 but less than £10,000:** fixed sum £70.
  - (c) **Debt £10,000 or more:** fixed sum £100.
- 5.14 Once the Agency has become entitled to a fixed sum, it is also entitled to reasonable costs of recovering the debt which may include, inter alia, the costs of a debt collection agency, a solicitor's letter and any applicable pre-action legal costs. For the avoidance of doubt, section 5A(3) of the Late Payment of Commercial Debts (Interest) Act 1998 creates a contractual right to recover costs even where they might be unrecoverable generally under the applicable Civil Procedure Rules and where the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms and Conditions, it agrees to indemnify the Agency for any losses suffered as a result thereof, including all reasonable legal and professional fees incurred.
- 5.15 When making a payment, the Client will quote relevant reference numbers and the invoice number.

## **6. Client's obligations and acknowledgments**

- 6.1 The Client acknowledges and agrees that:
- (a) by requesting the Agency to carry out an act on its behalf, the Client authorises the Agency to act on the Client's behalf for that purpose; and

- (b) by requesting the Agency to Introduce Candidates for a position, the Client authorises the Agency to advertise that position, subject to the provisions of clause 4.8.

6.2 When requesting the Agency to Introduce Candidates for a vacancy, the Client will provide to the Agency the following information:

- (a) the Client's full corporate name, address and registered number, or (if it is not incorporated) its full business and trading name and address, and the nature of its business;
- (b) the nature of the vacancy, including the type of work involved, its location, the hours of work, the commencement date and the likely duration;
- (c) any risks to health and safety known to the Client and the steps taken by the Client to prevent or control such risks;
- (d) the experience, training, qualifications and any authorisations which are required by the Client, including any qualifications or authorisations required by law or any applicable professional body;
- (e) any expenses payable by or to the Candidate;
- (f) the minimum rate of remuneration, the intervals of payment and any other benefits;
- (g) the length of notice to which the Candidate would be entitled to receive or be required to give for termination of employment;
- (h) whether the Client intends to Engage the Candidate otherwise than as an employee on a contract of service; and
- (i) whether the vacancy involves working with Vulnerable Persons, including persons under the age of 18 or persons in need of care or attention by reason of old age, infirmity or any other circumstances.

6.3 The Client will satisfy itself as to the suitability of any Candidate for the vacancy for which the Candidate has been Introduced. Without prejudice to the generality of the foregoing, the Client acknowledges and agrees that it is the Client's responsibility to:

- (a) take up and verify references relating to the Candidate's qualifications, skills, character and experience;
- (b) check the validity of the Candidate's qualifications;
- (c) ensure, where appropriate, that the Candidate is capable of operating any equipment or machinery to the necessary level;
- (d) obtain any certificate of sponsorship, visa or permit needed to enable the Candidate to work in the relevant position; and
- (e) ensure that the Candidate satisfies any medical requirements or other qualifications that may be appropriate or required by law.

6.4 The Client will notify the Agency immediately on the occurrence of the first of the following events:

- (a) a Candidate accepts an offer of employment from the Client; or
- (b) the commencement of an Engagement by a Candidate.

6.5 By agreeing to Engage or make use of a Candidate in any way, the Client will be liable for the Introduction Fee.

6.6 If the Client effectively Introduces any Candidate to any third party, whether directly or indirectly, including any Affiliate of the Client, and that Introduction results in an Engagement of the Candidate by that third party, the Client will:

- (a) immediately notify the Engagement to the Agency; and
- (b) pay to the Agency an Introduction Fee in accordance with clause 4, unless the Engagement occurs more than 18 months after the Introduction of the Candidate to the Client by the Agency or the date of the Candidate's last interview with the Client, whichever is the later.

6.7 If the Candidate Introduces any Further Candidate to the Client, whether directly or indirectly, including to any Affiliate of the Client, and that Introduction results in an Engagement of the Further Candidate by the Client or any third party, the Client will:

- (a) immediately notify the Engagement to the Agency; and
- (b) pay to the Agency an Introduction Fee in accordance with clause 4, unless the Engagement occurs more than 18 months after the Introduction of the Candidate to the Client by the Agency or the date of the Candidate's last interview with the Client, whichever is the later.

6.8 The Client undertakes not to employ or seek to employ any member of the Agency's staff. If any member of the Agency's staff nevertheless accepts an Engagement within 12 months of leaving the Agency's employment, the Client will pay an Introduction Fee to the Agency as if that member of staff had been Introduced to the Client by the Agency.

6.9 The Client:

- (a) confirms that it is not aware of anything which will cause a detriment to the interests of the Candidate or the Client if it Engages that Candidate to fill a vacancy; and
- (b) will inform the Agency immediately if it becomes aware of any circumstances which would render such Engagement detrimental to the interests of the Candidate or the Client;
- (c) if the Client is to lend money to the Candidate in order to meet travel or other expenses, the Client will notify the Agency and:
  - (i) will provide the terms of such loan to the Agency; and
  - (ii) warrants that the repayment terms of such loan will not require the Candidate to repay a greater sum than the sum lent.



6.10 The Client hereby grants to the Agency, or shall procure the direct grant to the Agency of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy, modify use the Client's name or any of its logos or trademarks for the purpose of promoting the Agency's business including, for the avoidance of doubt, the inclusion of the logos and trademarks on the Agency's website and other advertising and promotional materials, provided that the Agency shall not sub-license, assign or otherwise transfer the rights granted in this clause.

## **7. Confidentiality**

7.1 All Introductions are confidential. All work undertaken by the Agency for the Client in respect of the Introduction of a Candidate to the Client will be for the private and confidential use of the Client only and should not be reproduced in whole or in part or relied upon by third parties for any use whatsoever, without the express written authority of the Agency.

7.2 Each Party (Receiving Party) will keep the confidential information of the other Party (Supplying Party) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the confidential information of the Supplying Party for the purposes of this Agreement and for performing the Receiving Party's obligations under this Agreement. The Receiving Party will inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 7.2, and ensure that the Receiving Party's officers, employees and agents meet those obligations.

7.3 The obligations set out in this clause will not apply to any information that:

- (a) was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- (b) is, or becomes, publicly available through no fault on the part of the Receiving Party;
- (c) is provided to the Receiving Party without restriction on disclosure by a third party who did not breach any confidentiality obligations by making such a disclosure;
- (d) was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
- (e) is required to be disclosed by order of a court of competent jurisdiction.

7.4 The obligations set out in this clause will survive termination of this Agreement.

## **8. Data protection**

8.1 This clause **8** sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

8.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

8.3 Each party shall:

- (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement; and
- (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

8.4 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall where appropriate or relevant:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject access request;
- (c) provide the other party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 8; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation.

8.5 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## **9. Warranties, liability and indemnities**

9.1 The Agency warrants that has the necessary expertise to provide the services contemplated in this agreement and will perform them in keeping with professional business standards by using appropriately qualified, experienced and trained personnel.

9.2 The Agency warrants that it shall endeavour at all times to comply with all relevant statutes, laws, regulations and codes of practice from time to time in force in the country where the Engagement is to take place but at all times to comply with any relevant statutes, laws, regulations and codes of practice from time to time in force in England & Wales.

9.3 The Client accepts and agrees that the Agency gives no warranty as to the suitability of any Candidate for any vacancy.

9.4 The Agency confirms that, in Introducing any Candidate to the Client, it is not aware of anything which will cause any detriment to the interests of that Candidate or the Client if the Client Engages the Candidate to fill a vacancy.

9.5 Neither the Agency nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the Introduction to or the Engagement by the Client of a Candidate, unless such loss, damage, costs or expenses are the direct result of the negligent acts or omissions of the Agency. In particular, but without limitation, the Agency will not be liable for any loss, injury, damage, expense or delay arising from, or in any way connected with:

- (a) any failure of the Candidate to meet the Client's requirements for all or any of the purposes for which the Candidate is required by the Client;
- (b) any act or omission of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or

(c) any loss, injury, damage, expense or delay suffered by a Candidate.

9.6 Except in the case of death or personal injury caused by the Agency's negligence, the liability of the Agency under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever will not exceed the Introduction Fee(s) paid or due to be paid by the Client to the Agency under this Agreement. The provisions of this clause 9.6 will not apply to clause 9.8.

9.7 Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause 9.7 will not apply to clause 9.8.

9.8 The Client will indemnify and hold harmless the Agency from and against all Claims and Losses arising from loss, damage, liability, injury to the Agency, its employees and third parties, by reason of or arising out of:

- (a) any loss, injury, expense or delay suffered or incurred by a Candidate, however caused, and/or
- (b) any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise,

that arises directly or indirectly out of or in any way connected with arising out of or in any way connected with the Introduction, Engagement or use of a Candidate, the withdrawal by the Client of a vacancy, any information supplied by the Client to the Agency or the Client's breach of these Terms and Conditions. 'Claims' will mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise), and 'Losses' will mean all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.9 Each party warrants that it has full capacity and authority to enter into and perform this agreement.

## 10. Termination

10.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on written notice to the other Party (**Other Party**):

- (a) if the Other Party is in breach of its obligations under this Agreement and, if the breach is capable of remedy within 14 days, the breach is not remedied within 14 days of the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
- (b) if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt,

the notice will take effect as specified in the notice.

- 10.2 On termination of this Agreement, the Client will pay for all Recruitment Services provided up to the date of termination calculated in accordance with paragraph 3.1.1 of the Schedule, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Agency for the performance of the Recruitment Services before the date of termination (**Termination Fees**).
- 10.3 For the avoidance of doubt, the Agency will consider any attempt to unilaterally amend the particulars provided by the Client under clause 6.2, or to postpone or suspend the provision of the Recruitment Services as a breach of obligation, which, if not remedied, would entitle the Agency to terminate the Agreement and cause the Client to incur liability for the Termination Fees or, in the alternative, the Agency shall be entitled to treat such attempt at variation as a separate notification of a vacancy attracting a further Introduction Fee.

## 11. Dispute Resolution Procedure

- 11.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this Clause, as follows:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute;
  - (b) if for any reason the parties are unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be finally resolved by:
    - (i) in the case of a Dispute where the value in dispute is less than £10,000, the courts of England and Wales in accordance with Clause 13.12 (**Jurisdiction**);
    - (ii) in all other cases, any Dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration. It is agreed that:
      - (A) the tribunal shall consist of one arbitrator;
      - (B) in default of the parties' agreement as to the arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London;
      - (C) the seat of the arbitration shall be London;
      - (D) the law governing this arbitration agreement shall be English; and
      - (E) the language of the arbitration shall be English.

## 12. Survival

- 12.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

12.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

### **13. General**

#### **13.1 Force majeure**

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances exist for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

#### **13.2 Variations**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **13.3 Assignment**

- (a) The Agency may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written agreement of the Agency. The Client may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the Agency to be bound by the obligations of the assignor under this Agreement.

#### **13.4 Entire agreement**

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- (d) Nothing in this clause shall limit or exclude any liability for fraud.

### **13.5 Waiver**

No failure or delay by the Agency in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

### **13.6 Agency, partnership etc**

This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### **13.7 Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### **13.8 Announcements**

Neither party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

### **13.9 Interpretation**

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) the Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement; any reference to this agreement includes the Schedules;
- (e) references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

- (f) reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (g) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (h) the headings to the clauses and paragraphs of, and schedules to, this Agreement are not to affect the interpretation;
- (i) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (j) where the word 'including' is used in this Agreement, it will be understood as meaning 'including without limitation'.

#### **13.10 Notices**

Any notice to be given under this Agreement must be in writing and sent by first class mail to the address of the relevant Party set out in clause 2 or at the beginning of this agreement.

#### **13.11 Governing law**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

#### **13.12 Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

#### **13.13 Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.



## The Schedule – Introduction Fee

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- 1.1 The Introduction Fee payable is calculated by applying the appropriate percentage shown in the table in paragraph 2 below to the Candidate’s total first year’s remuneration. The total first year’s remuneration means all emoluments together with all benefits that are to form part of the Candidate’s annual gross taxable pay (i.e. the gross emoluments and benefits to be paid over 12 months before applying any exemptions, allowances or deductions for income tax purposes) and including: -
- 1.1.1 guaranteed payments;
  - 1.1.2 any starting or sign-on, performance-related or other bonuses (whether payable in cash or share incentives);
  - 1.1.3 any applicable weighting;
  - 1.1.4 any benefits in kind including pension contributions;
  - 1.1.5 where a car or car allowance is provided, the sum of £10,000 or the car allowance, whichever is the greater;
  - 1.1.6 where applicable, STIP and LTIP incentives, the notional value of which shall be calculated using the average value of such incentives paid by the Client over the three previous years for employees engaged in similar positions to that being filled by the Candidate.

## 2 The Introduction Fee

- 2.1.1 The Introduction Fee shall be calculated as follows:

Annual gross taxable pay	Percentage Charge
£50,000 to £99,000	42%
£100,000 to £500,000	44%
£500,000 to £1million	46%
£1million +	48%

- 2.2 For the avoidance of doubt, if the annual gross taxable pay is reduced because the Candidate elects to avail of any applicable share options or incentives, there shall be no corresponding reduction in the Introduction Fee which shall apply as if the share options or incentives were not available.
- 2.3 The Client will inform the Agency if it increases the remuneration payable to the Candidate within the first 12 months. The Agency will regard the increased remuneration as the correct one on which to base the calculation of the Introduction Fee and will submit a further invoice for the additional fee payable by the Client.
- 2.4 If the Candidate’s total first year’s remuneration is less than £50,000 the Introduction Fee payable will be 42% of the total first year’s remuneration subject to a minimum Introduction Fee of £20,000.00.

- 2.5 If the Candidate is Engaged on a fixed-term contract of 6 months or less, the Introduction Fee payable will be 50% of what it would have been if the Candidate had been Engaged for 12 months and remunerated accordingly.
- 2.6 If the Candidate is Engaged on a fixed-term contract of between 6 and 11 months, the Introduction Fee payable will be calculated on a pro-rata basis of what it would have been if the Candidate had been Engaged for 12 months and remunerated accordingly.
- 2.7 If the Candidate is Engaged in the circumstances outlined in Paragraphs 2.5 and 2.6 and the Engagement is extended or renewed, the Client will inform the Agency who will regard the renewal or extension as the correct length of Engagement on which to base the calculation of the Introduction Fee and will submit a further invoice for the additional fee payable by the Client.
- 2.8 If the Candidate is Engaged in a non-executive directorship, consultancy or commission only position attracting variable remuneration according to the time devoted to that office or income generated by the Candidate's performance or otherwise, the Introduction Fee payable will be either
- 2.8.1 £50,000 (fifty thousand pounds sterling); or
- 2.8.2 calculated based on what the remuneration would have been if the Candidate had been Engaged for 12 months in an executive directorship, the notional value of which shall be calculated using the average value of the annual gross taxable pay paid by the Client over the three previous years to employees engaged in similar positions;

whichever is greater.

### **3 Termination Fees**

- 3.1 Where the Client terminates for convenience under clause 3 or this agreement is otherwise terminated under clause 10, the Client shall become liable for the Termination Fees which are calculated as follows: -
- 3.1.1 *Recruitment Services provided up to the date of termination*
- 3.1.1.1 The Termination Fee for the Recruitment Services shall be calculated on a time basis and shall be calculated in accordance with the Agency's daily rates spent on the Recruitment Services by each individual, as follows:
- Directors: £5,000.00 per day  
Other Consultants/ Employees: £2,500.00 per day
- 3.1.1.2 The time spent on the Recruitment Services shall be recorded in six minute units. Routine letters out, emails and telephone calls timed at under six minutes will be charged as 1 unit per item but longer letters and calls will be charged on a time basis.
- 3.1.1.3 The Agency reserves the right to increase the daily rates if the Recruitment Services required are particularly complex or urgent, save that the Agency will notify the Client in advance and agree with the Client how the additional Recruitment Services will be charged.

### 3.1.2 *Expenditure*

The Client shall pay a further Termination Fee which equates to any expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Agency and which fee shall be the actual amounts incurred and shall, where required, be evidenced by receipts or other independent corroboration.