

## TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM CONTRACT STAFF (TO BE DIRECTLY ENGAGED BY THE CLIENT)

### 1. DEFINITIONS

1.1. In these Terms the following definitions apply:

<b>“Additional Services”</b>	any additional specific service, which may be ancillary to or as part of the Services which the Agency provide to the Client at its request
<b>“Agency”</b>	Marchwood Recruitment Limited or any company in our group of companies (“the Agency”)
<b>“Candidate”</b>	means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency’s own staff;
<b>“Client”</b>	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is introduced;
<b>“Engagement”</b>	means the engagement, employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
<b>“Introduction”</b>	means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;
<b>“Introduction Fee”</b>	means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;
<b>“Offer”</b>	an offer to engage the Candidate communicated either by the Client or the Agency at the Client’s request and which is accepted by the Client;
<b>“Remuneration”</b>	includes gross base salary, guaranteed bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party. Where the Client provides a company car, a notional amount of £5,000 will be added to the salary in order to calculate the Agency’s fee;
<b>“Requirement”</b>	a request from you in any form for our Services;
<b>“Services”</b>	to locate, introduce and/or supply Candidates for you in accordance with your Requirements
<b>“Cancellation Fee”</b>	means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.10;

**“Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention and includes any person under the age of eighteen.

1.2. Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

1.4. You agree to accept our Services and you acknowledge and agree:

(a) statutory obligations require us to provide specific information to each Candidate and to other authorities in relation to any Requirement; accordingly to enable us to comply with our obligations and to help us introduce a suitable candidate you must

(i) upon issuing a Requirement or as soon as possible thereafter provide the Requirement information required by us with answers to any additional questions we may raise, and

(ii) prior to an Engagement promptly inform us of any additional information or any change to information already provided

(b) in order to achieve a satisfactory outcome, to check that the Candidate is suitable for your purposes and that you are satisfied with the information and confirmations we have provided to you, regardless of our statutory obligations, and you agree in particular:

(i) regardless of any references or information that we may provide, to take up your own references for the Candidate and verify the curriculum vitae or other information supplied

(ii) to ensure that the Candidate has any necessary permit or authority to work for you and comply with asylum and immigration requirements relevant to an employer

(iii) to explain your requirements to the Candidate promptly on commencement of the Engagement if you have not already done so

(c) where you need authorisation or a licence to be able to engage a Candidate or allow the Candidate to work in the position you seek to fill, your request for us to seek a Candidate shall be deemed to be your confirmation that you have all necessary authorisations and licences unless you inform us otherwise,

1.5. (d) to ensure that all information you provide to us is full and accurate.

## 2. THE CONTRACT

2.1. These terms of business and the attached Schedule(s) (**“the Terms”**) constitute the contract between the Agency and the Client for the supply of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.

2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4. The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

## 3. NOTIFICATION AND FEES

3.1. The Client agrees to:

- 3.1.1. notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
  - 3.1.2. notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and
  - 3.1.3. pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.7.
- 3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of twelve calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).
- 3.3. Wherever there is an Engagement for which, regardless of the circumstances, the Agency believes (whether reasonably or otherwise) it is due an Introduction Fee, the Client shall within 7 days of our written request provide the Agency with information to enable it to identify the Remuneration and term of the Engagement including details of any renewal or extension of an Engagement or of any new Engagement relating to a Candidate.
- 3.4. The Introduction Fee is the amount equal to the relevant percentage as shown below of the Remuneration applicable during the first 12 months of the Engagement.
- |                        |
|------------------------|
| 20% - up to £69,999    |
| 25% - £70,000- £89,999 |
| 30% - £90,000 +        |
- 3.5. Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for
- the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.
- 3.6. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 3.7. The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement.
- 3.8. In the case of an Offer, Remuneration shall be calculated on the projected sum contained within the Offer.
- 3.9. For the purposes of calculating Remuneration the date of an Engagement shall in all cases be the earlier of the date of an agreement to engage or the date of commencement of any services under an Engagement.
- 3.10. Fees for any Additional Service will be agreed with the Client and are payable on delivery of the service or at such other time as may be agreed in writing
- 3.11. VAT is charged at the standard rate on all fees. Remuneration in foreign currency will be calculated at the Bank of England Sterling exchange rate applicable on the date of the Agency's invoice.
- 3.12. The Agency reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 30% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment. The parties agree that having taken independent legal advice, the provisions of this Clause are no greater than what is reasonable and necessary to protect the legitimate interests of the Agency pursuant to providing the Services.

#### 4. REFUNDS

- 4.1. In these Terms of Business, a Refund means a sum to be Refunded by the Agency (or to the Client in certain circumstances against a particular invoice at the times and rates described).
- 4.2. It is a condition precedent to any Refund being paid by the Agency that the invoice against which a Refund is or will be sought, is paid to the Agency's Factor within the credit terms shown on the invoice; irrespective of any surrounding circumstances.
- 4.3. Irrespective to any proven or claimed right to a Refund, all invoices must be paid within their credit terms to the Agency's factor and there is no right to set off any proven or claimed right to a Refund.
- 4.4. If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 12 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2 the Agency will refund the Introduction Fee in accordance with the accompanying Scale of Refunds set out in the Schedule attached to these Terms.
- 4.5. In order to qualify for the refund set out in clause 4.1, then the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement.
- 4.6. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 4.7. In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.
- 4.8. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of twelve calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

## 5. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a "**Third Party Introduction**". If that Third Party Introduction results in an Engagement of the Candidate by the third party within twelve months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee in accordance with clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

## 6. SUITABILITY CHECKS

- 6.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to
  - 6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
  - 6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body; and
  - 6.1.3. confirm that the Candidate is willing to work in the position [and]
  - 6.1.4. obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body].
- 6.2. Notwithstanding clause 6.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
  - 6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;

- 6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 6.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 6.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3. To enable the Agency to comply with its obligations under 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
- 6.3.1. the type of work that the Candidate would be required to do;
  - 6.3.2. the location and hours of work;
  - 6.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
  - 6.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 6.3.5. the date the Client requires the Candidate to commence the Engagement;
  - 6.3.6. the duration or likely duration of the Engagement;
  - 6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
  - 6.3.8. the intervals of payment of Remuneration; and
  - 6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 6.4. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:
- 6.4.1. obtain confirmation of the Candidate's identity;
  - 6.4.2. obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and
  - 6.4.3. obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.
- 6.5. The Client shall responsible for the health and safety of the Candidate and, without limiting that responsibility in any way, you shall
- (i) ensure that the work complies with all relevant health and safety procedures and requirements
  - (ii) undertake such risk assessments as are necessary to ascertain risks and not allow the Candidate to undertake any work that is hazardous without informing the Candidate and the Agency in writing of any specific or potential hazards
  - (iii) ensure that any equipment or vehicles provided by the Client for use in relation to the Engagement are in good order, suitable, safe and compliant with all relevant regulations and safety requirements

## 7. INFORMATION TO BE PROVIDED

7.1. When the Agency Introduces a Candidate to the Client the Agency shall inform the Client that they have obtained confirmation of the matters set out in clause 6.1 [and in the case of a position which involves working with Vulnerable Persons the matters in clause 6.4]. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

## **8. CONFIDENTIALITY AND DATA PROTECTION**

All information relating to a Candidate is confidential. In addition, information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

The Agency and the Client shall comply with The General Data Protection Regulation 2016 and The Data Protection Act 2018 and the personal data provided by the Agency to the Client is provided for the purpose of the Client considering the Candidate's suitability for the Engagement (the "Purpose"). The personal data must not be used for any purpose other than the Purpose. When providing this personal data of the Candidate, the Agency is acting as a Data Controller and the Client is acting as a Data Processor and the parties shall comply with the Data Processing Agreement that is attached as a Schedule to this agreement.

## **9. LIABILITY**

The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

## **10. COSTS INDEMNITY**

Client shall indemnify Agency 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 professional costs and expenses) suffered or incurred by Agency arising out of or in connection with enforcement of this agreement.

## **11. NOTICES**

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

## **12. SEVERABILITY**

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

## **13. GOVERNING LAW AND JURISDICTION**

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

\_\_\_\_\_  
*Signed for and on behalf of the Client*

**Print name**

**I confirm I am authorised to sign these Terms on behalf of the Client.**

Date \_\_\_\_\_

**SCHEDULE: SCALE OF REFUND (Clause 4.1)**

1. The following scale of refund only applies in the event that the Client complies with the provisions of clauses 3.1, 4.1 and 4.2 of these Terms.
2. Where the Candidate ceases working for the Client during the first 12 weeks of the Engagement (except where the Candidate is or will be made redundant) or fails to commence an Engagement, except in the circumstances set out in clause 3.10, a refund of the Introduction Fee shall be paid to the Client in accordance with the scale set out below, subject to the conditions in clause 4.1 and 4.2.

<b>Week in which the Engagement terminates in accordance with clause 4.2</b>	<b>%Introduction fee refunded</b>
0 – 4 weeks	90%
5 – 8 weeks	50%
9 – 12 weeks	25%

3. There will be no refund where the Candidate's Engagement is terminated (or the Engagement would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 13<sup>th</sup> week of the Engagement
4. A full Rebate will be refunded to the client within 90 days



## SCHEDULE: DATA PROCESSING AGREEMENT

### DEFINITIONS

In this schedule, the terms listed below, shall be defined as follows:

**Controller:** the Agency, as defined

**Data Protection Legislation:** (i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

**DPA 2018:** Data Protection Act 2018

**GDPR:** The General Data Protection Regulation (Regulation (EU) 2016/679)

**Party:** one of the Parties to this agreement

**Personal Data:** as defined in the Data Protection Legislation

**Processor:** the Client

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Processor related to this Agreement

### TERMS OF AGREEMENT

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Client is the Processor where information and Personal Data relating to candidates is supplied for the purposes of the Purpose defined in clause 8 of these terms and conditions.
2. The Client, when acting in the capacity of Processor, shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the requirements of this Agreement, unless required to do otherwise by law;
  - (b) ensure that it has in place Protective Measures to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) it does not process the Personal Data except in accordance with this Agreement;
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any individual who has access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Party's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller under this Agreement has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by law or regulatory authority to retain the Personal Data.
3. The Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
  - (f) becomes aware of a Data Loss Event.
4. The Processor's obligation to notify under clause 3 shall include the provision of further information to the Controller in phases, as details become available.
5. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to its obligations under Data Protection Legislation and any complaint, communication or request made under clause 3 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
6. The Parties shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement.

7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
  - (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
8. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
9. Either party may, at any time on not less than 30 Working Days' notice, revise this Agreement by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
10. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Either Party may on not less than 30 Working Days' notice to the other Party amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.