

# Standard Terms of Business

## Introduction of Candidates to Clients for Direct Employment/Engagement

### 1. Definitions

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In these Terms -

“**Candidate**” means the person Introduced by the Employment Agency to the Client for an Engagement including, but not limited to, any officer or employee of the Candidate if the Candidate is a limited company, any member or employee of the Candidate if the Candidate is a limited liability partnership, and members of the Employment Agency’s own staff;

“**Client**” means the person, firm or corporate body to whom the Employment Agency Introduces a Candidate, and “**Client Group**” means the person, firm or corporate body together with any subsidiary or associated company (as defined by s. 1159 of the Companies Act 2006) to whom the Employment Business supplies or introduces the Candidate and/or Contractor;

“**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);

“**Data Controller**” means (i) "data controller" in the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and (b) "controller" in accordance with the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018;

“**Data Protection Legislation**” means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation (a) the Data Protection Act 1998; (b) (with effect from 25 May

2018) the General Data Protection Regulation (EU) 2016/679; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;

“**Employment Agency**” means Handle Recruitment Limited a company incorporated in England and Wales under company number 01419017 and whose registered office is at 164–182 Oxford Street, London W1D 1NN.

“**Engagement**” means the engagement, employment or use of the Candidate by the Client or by any Third Party to whom or to which the Candidate was Introduced by the Client (whether with or without the Employment Agency’s knowledge or consent) on a permanent or temporary basis, howsoever engaged whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or through any other engagement directly or through a limited company of which the Candidate is an officer or employee or through a limited liability partnership of which the Candidate is a member or employee; or indirectly; through another company and “**Engages**” and “**Engaged**” shall be construed accordingly;

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“**Effective Date**” means the date on which these terms are signed by both parties;

“**Introduction**” means

a) The interview of a Candidate by the Client in person or by telephone or by any other means,

b) the passing of a curriculum vitae or information in any format which identifies the Candidate; or

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.

The time of the Introduction shall be taken to be the earlier of (a) and (b) above; and “**Introduced**” and “**Introduces**” shall be construed accordingly;

A Candidate will have been Introduced when they have not been contacted directly via the Client or by another third party before the Client’s instruction to the Employment Agency.

“**Personal Data**” means as set out in, and will be interpreted in accordance with Data Protection Legislation;

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with these Terms or which relates to any Candidate;

“**Process**” means as set out in, and will be interpreted in accordance with Data Protection Legislation and “**Processed**” and “**Processing**” will be construed accordingly;

“**Remuneration**” includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, shift allowances, location weighting and

call-out allowances, the benefit of a company car and all other payments or emoluments payable to or receivable by the Candidate for work (or for services where applicable) to be rendered to or on behalf of Client. Where the Client provides a company car, a notional amount of £5000 will be added to the salary in order to calculate Employment Agency’s fee;.

“**Terms**” means these Terms of Business as further defined with clause 2;

“**Third Party**” means any company or person who is not the Client. For the avoidance of doubt, subsidiary and associated companies of the Client (as defined by s. 1159 of the Companies Act 2006 and s.416 of the Income and Corporation Taxes Act 1988 respectively) are included (without limitation) within this definition.

“**Vacancy**” means a specific role/s, work or position that Client requests Employment Agency to submit person for consideration for such role/s work or position.

## 2. These Terms

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2.1 These Terms constitute the entire agreement between the Employment Agency and the Client in relation to the subject matter hereof and are deemed to be accepted by the Client and to apply by virtue of (a) an Introduction to the Client of a Candidate or (b) the Engagement by Client of a Candidate; or (c) the passing of information about the Candidate by the Client to any Third Party or (d) the Client’s interview or request to interview a Candidate or (e) the Client’s signature at the end of these Terms or (f) any other written expressed acceptance of these Terms. For

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the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by the Client for the same type of work and/or Vacancy as that for which the Introduction was originally effected.

2.2 The Terms supersede all previous agreements between the parties in relation to the subject matter hereof.

2.3 These Terms prevail over any other terms of business or purchase conditions put forward by the Client save where expressly agreed otherwise by Employment Agency.

2.4 The Client authorises the Employment Agency to act on its behalf in seeking a person to meet Client's requirements and, if the Client so requests, shall advertise for such persons through such methods as are agreed with the Client and at the Client's expense.

2.5 For the purposes of the Terms, the Employment Agency acts as an employment agency as defined within the Conduct Regulations.

### **3. Obligations of the Employment Agency**

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3.1 The Employment Agency shall use reasonable endeavours to introduce at least one suitable person to meet the requirements of the Client for each Vacancy. The Employment Agency cannot guarantee to find a suitable person for each Vacancy. Without prejudice to clause 3.2 below, the Employment Agency shall use reasonable endeavours to ascertain that the information provided by the Employment Agency to the Client in respect of the Candidate is accurate.

3.2 The Employment Agency accepts no responsibility in respect of matters outside its knowledge and the Client must satisfy itself as to the suitability of the Candidate.

### **4. Client Obligations**

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4.1 The Client shall satisfy itself as to the suitability of the Candidate. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, for criminal records and /or background checks and satisfying other requirements, qualifications or permission required by the Law and regulations of the country in which the Candidate is engaged to work.

4.2 To enable the Employment Agency to comply with its obligations under clause 3 the Client undertakes to provide to the Employment Agency details of the position which the Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of work; 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; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks.

4.3 The Client agrees to provide details of the date the Client requires the Candidate to commence work, the duration or likely duration of the work; the

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minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with the Client.

4.4 The Client agrees that it shall inform the Employment Agency of any information it has that suggests it would be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill.

4.5 The Client agrees to provide written notice to the Employment Agency within 1 working day where it receives details of a Candidate from the Employment Agency which it has already received from (a) another company; or (b) a person; or (c) the Candidate; or (d) any other source including (without limitation) from social media, job boards or advertisements placed by Client. Client further agrees that if no such notice is given by Client to Employment Agency then in the event of an Engagement of the Candidate by Client, howsoever arising, Client agrees to pay Employment Agency a fee in accordance with clause 5.2.

4.6 Where Client does so notify Employment Agency in accordance with 4.5 above and whereupon Client provides evidence to Employment Agency that such receipt of details by Client is in direct relation to the Vacancy, Client will not be liable to pay Employment Agency a fee for that Candidate in respect of the Vacancy. Client acknowledges and agrees that where Client is unable to evidence such or freely admits their possession of the Candidate's details was not in relation to the Vacancy, Client agrees to pay Employment Agency's fee in accordance with clause 5.2.

4.7 The Client agrees to -

- a) notify Employment Agency as soon as possible (and in any event, no later than 7 days from the date of offer or from the date the Engagement takes effect; whichever is earlier) of any offer of an Engagement which it makes to the Candidate; and
- b) notify Employment Agency immediately when its offer of an Engagement to the Candidate has been accepted and to provide details of the Candidate's Remuneration to Employment Agency; and
- c) pay Employment Agency's fee within the period set out under clause 6.2.

4.8 Client shall not, and shall not seek to cause Employment Agency to, unlawfully discriminate in relation to the services provided by Employment Agency to Client in connection with these Terms and shall disclose any and all information requested by Employment Agency in the event a Candidate makes a complaint to Employment Agency.

4.9 Client warrants that it shall not, and shall procure that its employees and agents shall not, pass any information concerning a Candidate to any Third Party. Client acknowledges that Introductions of Candidates are confidential and that failure to comply with this clause 4.9 may cause Employment Agency to breach the Conduct Regulations and/or the Data Protection Legislation and accordingly, Client agrees to indemnify Employment Agency from any and all liability in connection with Client's breach of this clause 4.9

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### 5. Charges/Fees

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5.1 Where the Client discloses to a Third Party any details regarding a Candidate and that Third Party subsequently Engages the Candidate within 12 months from the date of the Introduction, the Client shall pay the Employment Agency's fee as set out in clause 5.3. There is to be no entitlement to any rebate, discount or refund to the Client or Third Party in relation to fees paid in accordance with this clause 5.1.

5.2 The Client agrees to pay the Employment Agency a fee calculated in accordance with clause 5.3 where it Engages, whether directly or indirectly, any Candidate within 12 months from the date of the Employment Agency's Introduction.

5.3 The fee will be 20% of the Candidate's Remuneration applicable during the first 12 months of the Engagement. The Employment Agency will charge VAT on the fee where applicable.

5.4 Where the amount of the actual Remuneration is not known or disclosed, the Employment Agency will charge a fee calculated in accordance with clause 5.3 on the maximum level of remuneration applicable

- a) for the Vacancy; or
- b) for the type of position the Candidate had been originally submitted to the Client for or;
- c) for a comparable position in the general marketplace.

5.5 Where the Engagement is for a fixed term of 12 months or less, the fee in clause 5.3 will apply pro-rata. Where the Engagement is extended beyond the initial fixed term or where the Client re-Engages the Candidate within 12 months from the date of

planned or actual termination of the first Engagement, the Client shall pay a further fee based on the Remuneration applicable for the extended period of Engagement or the period of the second or subsequent Engagement calculated in accordance with clause 5.3.

5.6 Where Client withdraws an offer of an Engagement made to the Candidate, Client agrees to pay Employment Agency a minimum fee of 5 % of the Remuneration for the services provided by Employment Agency prior to Client's withdrawal. Client further agrees to indemnify and hold harmless Employment Agency from any all liability in connection with Client's withdrawal of such an offer.

5.7 Where 5.5 applies and the Client wishes to Engage the Candidate permanently a fee will apply as stated in clause 5.3.

5.8 Charges incurred by the Employment Agency at the Client's written request in respect of advertising or any other matters will be charged to the Client in addition to the fee and such charges will be payable whether or not the Candidate is Engaged.

5.9 Where the Client engages, either on its own account or in partnership or association with any person, company or organisation, or otherwise and whether directly or indirectly during, or for a period of 12 months from the expiration of, these Terms of Business, any employee or any key executive of the Employment Agency, the Client shall pay the Employment Agency a fee equivalent to 12 months of the current gross salary of the relevant employee/key executive. The Employment Agency will charge VAT on the fee where applicable. There is to be no entitlement to any rebate, discount or refund to the

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Client in relation to fees paid in accordance with this clause 5.9.

5.10 Client acknowledges that it has no right to set-off, withhold or deduct monies from sums due to Employment Agency under or in connection with these Terms.

### 6. Invoices

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6.1 Except in the circumstances set out in clause 5.1, 5.6, 5.8 and 5.9 no fee is incurred by the Client until the Candidate commences the Engagement; whereupon the Employment Agency will render an invoice to the Client for its fees.

6.2 The Employment Agency shall raise invoices in respect of the charges payable and the Client agrees to pay the amount due within 14 days of the date of the invoice.

6.3 All invoices will be deemed to be accepted in full by the Client in accordance with the payment terms stated within clause 6.2 unless the Client notifies the Employment Agency in writing within 5 days of receiving the invoice, stating the amount the Client disputes and the reason for the disputes. Any invoices re-issued to a different legal entity at the Client's request must be paid within the original agreed payment terms. In the event the Client does so notify the Employment Agency that it wishes to dispute part of an invoice, the Client agrees to pay the undisputed part of the invoice within the agreed payment terms and shall co-operate fully with the Employment Agency in order to resolve the dispute as quickly as possible.

6.4 Employment Agency reserves the right to charge interest on invoiced amounts overdue at the statutory rate as prescribed pursuant to Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (as may be calculated using the calculator on the website: [www.payontime.co.uk](http://www.payontime.co.uk)) from the due date until the date payment is received in cleared funds and reserves the right to charge compensation and further recovery costs in accordance with the Late Payment of Commercial Debts Regulations 2013.

6.5 In the event that a purchase order number is required it must be submitted by the Client before the Candidate commences the Engagement. Should the Client fail to provide the required P/O number, invoices will be submitted for payment in accordance with clause 6.1.

6.6 All Invoices will be raised in GBP by the Employment Agency. All payments made against the invoices must be in GBP unless agreed otherwise, in writing, by both parties.

### 7. Discount & Rebates

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7.1 In the event that the employment of the candidate is terminated, in accordance with clause 7.3 and The Client requests a replacement candidate, the client will qualify for a discount on the introduction fee for the replacement candidate. The fee for the replacement candidate will be discounted to reflect the number of months worked by the original candidate. The Client would be entitled to a discount on the fee of the replacement candidate as below:



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<b>Duration of Employment of original candidate (completed)</b>	<b>Discount applied to replacement candidate</b>
Up to 1 Month	100.0%
2 Months	83.3%
3 Months	75.0%
4 Months	66.7%
5 Months	58.3%
6 Months	50.0%
7 Months	41.7%
8 Months	33.3%
9 Months	25.0%
10 Months	16.7%
11 Months	8.3%
12 Months	0%

7.2 Where the Client qualifies for a rebate in accordance with clause 7.3, and the employment of the Candidate is terminated by the Client or the Candidate, the Client will be entitled to a rebate of the introduction fee as follows:

<b>Duration of Employment (Up to)</b>	<b>Percentage of Fee to be rebated</b>
1 Month	100%
2 Months	50%
3 Months	25%

7.3 The following conditions must be met in order for the Client to qualify for a rebate or discount

a) the Client must notify the Employment Agency that the Candidate's employment has ended within 7 days of the employment ending or within 7 days of notice being given to end the employment;

whichever is earlier together with a reason for the premature end of the employment;

b) the Employment Agency's invoice for the fee must have been paid within the payment terms in accordance with clause 6.2; and

c) the Candidate's employment is not terminated by reason of redundancy or re-organisation or change in strategy of the Client; or

d) the Candidate's employment is not terminated by reason of poor performance prior to the completion of any induction or training period;

e) if the Candidate's employment is terminated by reason of misconduct, rebate is only due where such misconduct was reasonably foreseeable by Employment Agency;

f) the Candidate did not leave the employment because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to the Candidate's acceptance of the employment; or

g) the Candidate did not leave the employment as a result of discrimination or other acts against the Candidate; or

h) the Candidate was not at any time in the 12 months prior to the start of the employment employed or hired (whether on a permanent or contract basis directly or indirectly) by the Client.

7.4 Where the Client re-engages the Candidate either on an employment, worker or indirect basis (via a Third Party), the Client agrees that any discount provided or rebate paid to the Client under clause 7.1 or 7.2 in respect of that Candidate, will be immediately repaid to the Employment Agency by the Client.

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7.5 In circumstances where clause 5.5 applies, the rebate will apply pro-rata. For clarification if the contract is for a fixed term of 6 months the total time period for rebates will be pro-rated to a maximum of 6 weeks.

7.6 Where clause 5.7 applies there shall be no rebate.

7.7 For the purposes of this clause 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.

### **8. Liability and Indemnity**

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8.1 The Employment Agency shall use reasonable endeavours to ensure Candidate has the required standard of skill, experience and necessary qualifications as stated in the Vacancy; nevertheless, the Employment Agency is not liable for any loss, expense, damage or delay arising from and in connection with any failure on the part of Employment Agency or of Candidate to evidence such to Client nor for any negligence whether wilful or otherwise, dishonesty, fraud, acts or omissions, misconduct or lack of skill, experience or qualifications of Candidate.

8.2 The Employment Agency is not liable for any indirect or consequential losses or damage including but not limited to; loss of profits, revenue, goodwill, anticipated savings or for claims by third parties arising out of the Employment Agency's performance or failure to perform any of its obligations in these Terms.

8.3 Notwithstanding clause 8.2 above, nothing in these Terms will be deemed to exclude or restrict any liability of Employment Agency to Client for personal injury, death or fraud directly caused by Employment Agency.

8.4 The Employment Agency shall not be liable for failure to perform its obligations under these Terms if such failure results by reason of any cause beyond its reasonable control.

8.5 Client will indemnify and keep indemnified Employment Agency against any costs (including legal costs), claims or liabilities incurred directly or indirectly by the Employment Agency arising out of or in connection with these Terms including (without limitation) as a result of -

- a) any breach of these Terms by the Client or by its employees or agents;
- b) any breach by the Client or by Third Party, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity, immigration legislation and the Conduct Regulations) and Data Protection Legislation; and/or
- c) any unauthorised disclosure of a Candidate details by the Client or by Third Party, or any of its employees or agents.

### **9. Termination**

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9.1 These Terms may be terminated by either party by giving to the other immediate notice in the event that either the Employment Agency or the Client goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a



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receiver or administrator appointed or where the Employment Agency has reasonable grounds to believe the Client will not pay the Employment Agency's invoice within the payment terms agreed within clause 6.2.

9.2 These Terms may be terminated by either party for convenience by serving three months' notice in writing.

9.3 Without prejudice to any rights accrued prior to termination, the obligations within clauses 1, 4.9, 5, 6, 7.4, 8, 11, 12, 13, 14, 15 and 16 will remain in force beyond the cessation or other termination (howsoever arising) of these Terms.

9.4 The initial term of this Agreement is 24 months from the Effective Date. The Employment Business has the option to terminate the Agreement with effect from the 24 month anniversary of the Effective Date, by giving one month's notice in writing to the Client. In the absence of such notification being given on or before the Effective Date, the Terms shall be treated as continuing for a further 12 month term. In any event, either party may terminate these Terms at any time by giving not less than three months' notice in writing to the other party.

### 10. Equal Opportunities

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10.1 The Employment Agency is committed to equal opportunities and expects the Client to comply with all anti-discrimination legislation as regards the selection and treatment of Candidates.

### 11. Confidentiality

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11.1 All information contained within these Terms will remain confidential and the Client shall not divulge it to any Third Party save for its own employees and professional advisers and as may be required by law.

11.2 The Client shall not without the prior written consent of the Employment Agency provide any information in respect of a Candidate to any Third Party whether for employment purposes or otherwise.

### 12. Data Protection

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12.1 For the purposes of this clause 12 "Data Subject" means as set out in, and will be interpreted in accordance with Data Protection Legislation. For the avoidance of doubt, Data Subject includes Candidate.

12.2 The parties hereto acknowledge that Employment Agency is a Data Controller in respect of the Personal Data of Candidate and provides such Personal Data to Client in accordance with the Data Protection Legislation for the purposes anticipated by these Terms.

12.3 The parties hereto acknowledge that Client is a Data Controller but the parties hereto are not Joint Controllers (as defined within Data Protection Legislation) save where a specific agreement is made to that effect between the parties hereto.

12.4 The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by Client, Employment Agency or by Candidate, will be used, Processed and recorded

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by the receiving party in accordance with Data Protection Legislation.

12.5 The parties hereto will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.

12.6 Client will -

- a) comply with the instruction of the Employment Agency as regards the transfer/sharing of data between the parties hereto. If Client requires Personal Data not already in its control to be provided by Employment Agency, Client will set out their legal basis for the request of such data and accept that Employment Agency may refuse to share/transfer such Personal Data where, in the reasonable opinion of Employment Agency, it does not comply with its obligations in accordance with Data Protection Legislation;
- b) not cause the Employment Agency to breach any of their obligations under the Data Protection Legislation.

12.7 In the event Client becomes aware of an actual or any reasonably suspected Personal Data Breach, it will immediately notify Employment Agency and will provide Employment Agency with a description of the Personal Data Breach, the categories of data that was the subject of the Personal Data Breach and the identity of each Data Subject affected and any other information the Employment Agency reasonably requests relating to the Personal Data Breach.

12.8 In the event of a Personal Data Breach, Client will promptly (at its own expense) provide such information, assistance and cooperation and do such things as Employment Agency may request to -

- a) investigate and defend any claim or regulatory investigation;
- b) mitigate, remedy and/or rectify such breach; and
- c) prevent future breaches.

and will provide Employment Agency with details in writing of all such steps taken.

12.9 Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of Employment Agency.

12.10 Client agrees it will only Process Personal Data of Candidate for the agreed purpose that is introduction for a Vacancy pursuant to these Terms.

12.11 Client will provide evidence of compliance with clause 12 upon request from Employment Agency.

12.12 Client will indemnify and keep indemnified Employment Agency against any costs, claims or liabilities incurred directly or indirectly by Employment Agency arising out of or in connection with any failure to comply with clause 12.

### 13. General

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13.1 Any failure by the Employment Business to enforce at any particular time any one or more of these Terms will not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.

13.2 Headings contained in these Terms are for reference purposes only and will not affect the intended meanings of the clauses to which they relate.

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13.3 No provision of these Terms will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999.

13.4 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of these Terms will remain in full force and effect to the extent permitted by law.

13.5 Any reference to legislation, statute, act or regulation will include any revisions, re-enactments or amendments that may be made from time to time.

### 14. Notices

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14.1 Any notice required to be given under these Terms (including the delivery of any information or invoice) will be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purposes of these Terms).

14.2 Notices will be deemed to have been given and served,

a) if delivered by hand, at the time of delivery if delivered before 5.00 pm on a business day or in any other case at 10.00 am on the next business day after the day of delivery; or

b) if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless

the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or

c) if sent by prepaid first class post, 48 hours from the time of posting.

### 15. Variation

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15.1 No variation or alteration of these Terms shall be valid unless approved in writing by the Client and the Employment Agency.

### 16. Applicable Law

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16.1 These Terms shall be construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.