



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

RETAINER FEE

Parties

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THE PARTIES

- (1) (1) Macdonald McEwan Limited (registered company no. SC351429. of Herkimer House, Mill Road Industrial Estate, Linlithgow, EH49 7SF ("the Employment Business").
- (2) (2) _____ of (address) _____ ("The Hirer") For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the the Candidate or Replacement Candidate is Introduced.

1. DEFINITIONS

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1.1.

In these Terms the following definitions apply:

- "Cancellation Fee" 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 3.9;
- "Candidate" 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;
- "Commencement Date" means [insert number] day of [insert month] [Insert year] and for the avoidance of doubt all the provisions of these Terms shall be deemed to become effective at this date;
- "Data Protection Laws" means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
- "Engagement" means the engagement (including the Candidate's acceptance of the Client's offer), 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;
- "Exclusivity Term" means the period commencing on the Commencement Date and during which these Terms shall remain in force;
- "Introduction" means (i) the passing to the Client of a curriculum vitæ 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;
- "Losses" means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;
- "Remuneration" includes gross base salary or fees, guaranteed and/or anticipated 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 will be added to the salary in order to calculate the Agency's fee; [see Note 4]

"Replacement Candidate" means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first [12] weeks of the Engagement;

"Retainer Fee" means the fee payable by the Client as set out in clause 3.2;

"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.

- 1.1. Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.
- 1.2. The headings contained in these Terms are for convenience only and do not affect their interpretation.

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 Introduction 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* 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* 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, to be calculated in accordance with the provisions of this clause 3, by the due date(s) for payment in clause 3.2.
- 3.2. The Retainer Fee calculated in accordance with this clause 3.2 and clause 3.3 is payable in the following 3 instalments:
 - 3.2.1. One third of the Retainer Fee upon the Agency's acceptance of the Client's instructions, payable within 7 days of the date of the invoice;
 - 3.2.2. One third of the Retainer Fee upon delivery by the Agency of a [long- list/ short-list] of candidates, payable within 7 days of [the date of the] invoice; and
 - 3.2.3. The final third of the Retainer Fee upon the Client's Engagement of the Candidate payable within 7 days of [the date of the] invoice.
 - 3.2.4. Where the precise Remuneration is not known in advance, for the purposes of the first two instalments of the Retainer Fee the Agency will estimate the Remuneration in accordance with clause 3.4 below. Where the precise Remuneration becomes known to the Agency prior to the Candidate's commencement of the engagement, the final instalment of the Retainer Fee will be based on the actual Remuneration and any necessary adjustments will be made. **The Client remains liable for payment due (but not yet paid) under clauses 3.2.1 and 3.2.2 and is not entitled to a refund for any sums already paid to the Agency where the Client decides not to proceed with the search or Engagement of the Candidate.**
 - 3.2.5. The final instalment of the Retainer Fee set out in clause 3.2.3 only becomes payable by the Client if the Client Engages the Candidate within the period of 6 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). [see Note 10]
- 3.3. The Retainer Fee is the amount equal to 40 % of the Remuneration applicable during the first 12 months of the Engagement.
- 3.4. Where the actual Remuneration is not known, the Agency will charge an Retainer 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.

- 3.5. Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Retainer Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Retainer Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.
- 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. VAT is charged at the standard rate on all fees.
- 3.8. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 3.9. If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee of £5,000.

4. REFUNDS

- 4.1. 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 8 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2 the Agency will refund 25% of the third instalment only of the Retainer Fee for each complete week of the initial 12 week period not worked by the Candidate. For the avoidance of doubt, the total amount of any applicable refund shall not exceed the value of the third instalment of the Retainer Fee.
- 4.2. In order to qualify for the refund set out in clause 4.1:
- 4.2.1. 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; and
- 4.2.2. the Client must exclusively give the Agency 4 weeks from the date of the notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 4 weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of 8 weeks from the date of commencement of the Replacement Candidate's Engagement the Client will then be eligible for a refund, subject to the rest of this clause 4.
- 4.3. 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.
- 4.4. In circumstances where clause 3.5 applies, the full Retainer Fee is payable and there shall be no entitlement to a refund.
- 4.5. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 6 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 6 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 calculated in accordance with clause 3.3. 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;
- 6.1.3. confirm that the Candidate is willing to work in the position
- 6.2. Notwithstanding clause 6.1 the Client must 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 clause 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.

7. EXCLUSIVITY TERM

- 7.1 The Agency agrees to Introduce Candidates to the Client for Engagement directly by the Client for the duration of the Exclusivity Term.
- 7.2 The Client agrees that during the Exclusivity Term it will exclusively use the services of the Agency for the Introduction of permanent or contract staff. The Client will not use the services of any employment agency, directly or indirectly, other than the Agency save in circumstances where the Agency has searched for Candidates but is unable to Introduce suitable Candidates for Engagement, or in the circumstances set out in clause 7.3.
- 7.3 Nothing in these Terms shall preclude the Client from
- 7.3.1 responding to unsolicited approaches from third party agencies by referring that agency to the Agency to serve as a sub-contractor or consultant for the Agency;
 - 7.3.2 responding to unsolicited approaches from work-seekers directly;
 - 7.3.1 directly approaching work-seekers using its own resources.
- 7.4 Subject to the provisions for earlier termination set out in clause 7.5 below, the Exclusivity Term shall terminate by either party giving the other 3 months' written notice.
- 7.5 Either party may immediately terminate the Exclusivity Term by notice to the other if the other:
- 7.5.1 commits a breach of these Terms which in the case of a breach capable of remedy shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy;
 - 7.5.2 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the party resulting from such reconstruction or amalgamation if a different legal entity shall agree to have the contract assigned to it and to take on all liabilities and obligations thereunder whether actual or contingent).
- 7.6 For the avoidance of doubt in the event that the Exclusivity Term is terminated by either party, the Client remains obligated to pay any fees owed to the Agency in accordance with the Terms, irrespective of whether these fees relate to an Introduction made before or after the Exclusivity Term is terminated.

8. INFORMATION TO BE PROVIDED

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.

9. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Candidate is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. 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.

10. LIABILITY

10.1. 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.

10.2. The Client shall indemnify and keep indemnified the Agency against any Losses incurred by the Agency arising out of any non-compliance with the Data Protection Laws, and/or as a result of any breach of, these Terms by the Client.

11. NOTICES

All notices which are required to be given in accordance with these Terms 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 **Scotland** and are subject to the exclusive jurisdiction of the Courts of **Scotland**.

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 _____