



WIGHTHALL

~ C O L L E C T I V E ~

READ THESE TERMS OF AGREEMENT CAREFULLY AS THEY ARE BINDING UPON YOU. IT IS THE COMPANY'S POLICY TO STRICTLY ENFORCE ITS TERMS OF AGREEMENT IN THE EVENT OF ANY DISPUTE. WE, IN PARTICULAR, DRAW YOUR ATTENTION TO CLAUSE 7, LIABILITY.

In performance of these terms, Wighthall Collective Ltd is acting as an Employment Business, as defined in the Employment Agencies Act 1973.

THE SUPPLY OF PERMANENT STAFF TERMS OF BUSINESS

1. DEFINITIONS

1.1 In these Terms of Business the following definitions apply:

"Acceptance" An offer to Engage a Candidate shall be deemed Accepted when an affirmative response is communicated to the Client, agreeing to an Engagement, in any format or media, including written or oral, by either the Candidate, the Employment Business or any third party on behalf of the Candidate.

"Applicant" means the person introduced by the Employment business to the Client for an Engagement including any member of the Employment business's own staff;

"Client" means the person, firm or corporate body together with any subsidiary or associated Company as defined by the Companies Act 1985 to whom the Applicant is introduced;

"Data Protection Laws" means the Data Protection Act 2018; the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK; and any successor legislation effective in the UK.

"Employment Business" means Wighthall Collective Ltd.

"Engages/Engaged/Engagement" means the engagement, employment or use of the Applicant directly by the Client or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an Employment Business, licence, franchise, or partnership arrangement; or any other engagement; directly or through a limited company of which the Applicant is an officer or employee.

"Introduction" means the Client interview of an Applicant in person or by telephone, following the Client's instruction to the Employment business to search for an Applicant; or the passing to the Client of a curriculum vitae or other information which identifies the Applicant and which leads to an Engagement of that Applicant by the Client.

"Introduction Fee" means the fee payable by the Client to the Employment Business for an Introduction resulting in an Engagement as detailed in Clause 3.4

"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 Applicant for services rendered to or on behalf of the Client or any third party.

"Replacement Applicant" means any Applicant Introduced by the Employment Business 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 8 weeks of the Engagement.

1.2 Unless the context requires otherwise, reference to the singular include the plural and references to the masculine include 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 Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures means as set out in the Data Protection Laws in force at the time

1.5 a reference to writing or written includes emails.

2. THE CONTRACT

2.1 These Terms govern the supply of the Applicant services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of an introduction to, or the Engagement of an Applicant or the passing of any information about the Applicant 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 Employment Business, these terms of business prevail over any other terms of business or purchase conditions 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 Employment Business and the Client and are set out in writing

3. NOTIFICATION AND FEES

3.1 The Client agrees;

(a) To notify the Employment Business immediately of any offer of an Engagement which it makes to the Applicant;

(b) To notify the Employment Business immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the Remuneration's to the Employment Business; in writing; and

(c) To pay the Employment Business's fees within 30 days of the date of invoice.

3.2 The Client incurs no Introduction Fee until the Applicant Accepts the Engagement, however, the Employment Business will render an invoice to the Client for its fees on commencement of the Engagement.

3.3 The Employment Business reserves the right to charge interest on invoiced amounts unpaid for more than 14 days at the rate of 4% per annum above the base rate from time to time of NatWest Bank from the due date until the date of actual payment.

3.4 The Introduction Fee payable to the Employment Business by the Client is calculated in respect of an amount equal to 15% of the anticipated Remuneration during the first 12 months of an Engagement.. VAT will be charged on the fee unless it is deemed to not apply.

3.5 In the event that the engagement is for a fixed term of less than 12 months, the Introduction Fee in clause 3.4 will be pro-rated. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Applicant within three months of the termination of the first Engagement the client shall be liable to pay a further fee based on the additional

Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is the sooner.

3.6 The Introduction Fee calculated in accordance with clause 3.4 above is payable if the Client En-

gages the Applicant within the period of 6 calendar months from the date of the Introduction. This clause shall apply in all circumstances including where, subsequent to the date of the Introduction, the Applicant is introduced by a third party or applies directly to the Client for employment or otherwise directly offers his or her services to the Client whether such application or offer is in response to a general advertisement or other form of recruitment media placed by the Client or on the Client's behalf or otherwise.

3.7 In the event the Client does not notify the Employment Business that an Applicant has Accepted an Engagement by the date of commencement of the Engagement, then the Employment Business shall be entitled to Invoice the Client immediately for the Introduction Fee.

4. REFUND

4.1. If, after an offer has been made and Accepted, the Engagement (a) does not commence because the Applicant withdraws their Acceptance; (b) the Client withdraws an offer after Acceptance; or (c) once it has commenced, is terminated by either the Applicant or the Client (except in circumstances where the Applicant 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 Employment Business will refund the Introduction Fee on the following basis. If the termination or withdrawal of Acceptance:

(a) takes place before commencement or between 0 and 1 week of commencement of the Engagement – 90% of the Introduction Fee;

(b) takes place between 2 and 4 weeks of commencement of the Engagement – 70% of the Introduction Fee;

(c) takes place between 5 and 6 weeks of commencement of the Engagement – 60% of the Introduction Fee; and

(d) takes place between 7 and 9 weeks of commencement of the Engagement – 40% of the Introduction Fee;

(e) takes place between 10 and 12 weeks of commencement of the Engagement – 12% of the Introduction Fee.

4.2. In order to qualify for the refund set out in clause 1:

4.2.1. the Client must comply with the provisions of clause 3 and must notify the Employment Business in writing of the termination of the Engagement, by the Client or Applicant or the non-commencement of the Engagement within 7 days of its termination or non-commencement; and

4.2.2. all monies due to the Employment Business from the client have been received in full by the Employment Business in accordance with this contract including, without limitation, Clauses 3.4, 3.5 and 3.6

4.3. The Client must exclusively give the Employment Business 12 weeks from the date of the notice of non-commencement or termination in which to find a suitable Replacement Applicant, and such suitability shall be determined solely by the Employment Business, in accordance with the Client's original Applicant specification based on the original specification given for the position the Client is seeking to fill. If after 8 weeks from the date of the notice no suitable Replacement Applicant can be found, or if the Replacement Applicant's Engagement is terminated before the expiry of 12 weeks from the date of commencement of the Replacement Applicant's Engagement the Client will then be eligible for a refund, subject to the rest of this clause.

4.4. In the event the Introduction Fee for a Replacement Applicant would be greater than the Introduction Fee for the terminated Applicant, due to the Remuneration being greater for the Replacement Applicant, the Client shall be liable to pay any additional amount, on a pro rata basis, to ensure the Introduction Fee received by the Employment Business reflects the increased Remuneration of the Replacement Applicant. The Employment Business shall be entitled to invoice for this additional amount immediately after the Replacement Applicant Accepts the Engagement.

4.5. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on

which the Applicant 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. There will be no refund where the Applicant's Engagement is terminated or would have terminated on this basis.

4.6. In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.

4.7. If subsequent to the Client receiving a refund the Applicant is re-Engaged within a period of 6 calendar months from the date of termination then the refund shall be repaid to the Employment Business in full. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Applicant.

4.8. Rebates are not applicable to discounted fees.

5. INTRODUCTIONS

5.1 Introductions of applicants are confidential. The disclosure by the Client directly or indirectly to a third party of any details regarding an Applicant introduced by the Employment Business which results in an Engagement with that third party within 6 months of the Introduction renders the Client liable to payment of the Employment Business's fee as set out in clause 3.4 with no entitlement to any refund.

6. SUITABILITY

6.1 The Employment Business uses all reasonable endeavours to ensure the suitability of any Applicant introduced to the Client. Notwithstanding this the Client shall satisfy itself as to the suitability of the Applicant and shall take up any references provided by the Applicant and/or the Employment Business before engaging such Applicant. The Client shall be responsible for obtaining work and other permits if required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements or qualifications required by law of the country in which the applicant is engaged to work.

7. LIABILITY

7.1 The Employment Business 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 Employment Business seeking an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of the Employment Business to Introduce any Applicant. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.

8. CONFIDENTIALITY AND DATA PROTECTION

8.1. Any information relating to the Employment Business's business which is capable of being confidential must be kept confidential and not divulged to any third party, except for information which is in the public domain.

8.2. Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.

8.3. The parties acknowledge and agree that in relation to the specific purpose of sharing personal data pursuant to this Agreement, as set out in clause 8.4, and for the purposes of the Data Protection Laws, that they shall both, independently be a Data Controller and shall have responsibility for ensuring they have a legal basis for processing and for compliance with the Data Protection Laws.

8.4. The Parties acknowledge and agree that the only personal data which will be supplied by the Employment Business will be the employment information and personal data necessary for the assessment of the suitability of the Applicant for the Engagement and the Client warrants that it shall only process the personal data for this limited purpose on the basis of this Agreement. The Client shall only retain such Applicant personal data for the duration necessary to determine whether the Client will make an offer to Engage the Applicant, and if it does not make an offer then the Client shall immediately delete all Applicant personal data unless it has another legal basis for processing pursuant

to the Data Protection Laws. In the event the Client Engages an Applicant they shall establish their own legal basis for processing the Applicant's personal data and warrants they shall not rely on this Agreement and the Services supplied, for any further processing of personal data.

8.5. Without prejudice to the generality of clause 8.2, the Employment Business will ensure that it has all necessary appropriate legal bases and notices in place to enable lawful transfer of the personal data to the Client for the duration and purposes of this Agreement, subject to clause 8.4.

8.6. Without prejudice to the generality of clause 8.2, both parties shall, in relation to any personal data shared or processed in connection with the performance of this Agreement:

8.6.1. process that personal data only as required for performance of this Agreement unless they are required by the laws of England and Wales or by the laws of the European Union applicable (Applicable Laws). Where a party is relying on such laws as the basis for processing personal data, they shall promptly notify the other of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit them from doing so;

8.6.2. 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, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

8.6.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

8.6.4. not transfer any personal data outside of the European Economic Area:

8.6.5. where a request relates to shared personal data assist the other party, at their cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

8.6.6. notify the other without undue delay on becoming aware of a personal data breach in relation to personal data shared pursuant to this agreement; and

8.6.7. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or their designated auditor on reasonable notice.

8.7. The Employment Business does not consent to the Client sharing personal data with any third party under this

Agreement.

8.8. Indemnity. Each party shall indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of any breach of the Data Protection Laws and/or this clause 8 by the other 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. The liability of the indemnifying party under this clause 8 shall be subject to a limit of the Introduction Fees payable in the 12 months preceding the event giving rise to the claim and/or loss. This indemnity shall be the sole and exclusive remedy of either party in relation to a breach set out in this clause 8.8.

9. 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

or by email to a Director of the other party. 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, when that email is sent.

10. 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.

11. LAW

11.1 These Terms are governed by the laws of England and Wales, and are subject to the exclusive jurisdiction of the Courts of England and Wales.

Signed for and on behalf of the Employment Business

PRINT NAME

I confirm I am authorised to sign these Terms on behalf of the Employment Business

Date _____

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 _____