

DETAILED TERMS OF BUSINESS (DTOB)

These Detailed Terms of Business ('DTOB') apply to all our business unless otherwise specified by us, and relate primarily to the introduction and/or supply of Candidates for permanent or temporary roles. These DTOB must be read in conjunction with the Client Services Agreement ('CSA') (together referred to throughout as 'Terms of Business') which we have sent to you.

Note: we may publish updated versions of these DTOB from time to time.

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Section 1 - definitions and meanings

Additional Service	any additional specific service, which may be ancillary to or as part of the Services or which may relate to other business, which we provide to you following your request
Agency Worker	an agency worker as defined by R.3 of the AWR
Assignment	an Engagement in respect of which details have been negotiated and agreed through us in advance of commencement, being either a Permanent Placement, a Temporary Placement or a Temporary Supply NOTE: an Engagement which you do not agree with us in advance is not an Assignment
AWR	the Agency Workers Regulations 2010 and any related regulations
Candidate	any person, whether presenting as an individual, a contractor, an interim manager, whether self-employed or otherwise, and/or a limited company through which a person is offering services, or a supplier company, in respect of whom or which, or in respect of whose skills or services, information is provided to you by us
Charge	the amount specified as the Charge in the CSA at Fees 3
Comparator Terms	the pay and basic working and employment conditions as set out in R.6 of the AWR that are ordinarily in force within your business and which would have been applicable had the Candidate been engaged directly by you on the first day of their assignment to do the same job
Conduct Regulations	the Conduct of Employment Agencies and Employment Businesses Regulations 2003
Connected Person	a person with whom we conduct business, being (a) a subsidiary company (as defined by s.1159 Companies Act 2006) or associated bodies corporate (as defined by s.256 Companies Act 2006) of yours, or (b) a business (whether corporate or unincorporated) (i) which is a member of, director of, or partner in, your company or business, or (ii) of which you are a member, or director or partner, or (iii) for which either you or a representative of yours is authorised by you (whether expressly or impliedly) to undertake work (other than solely in a professional capacity), or

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(iv) which has a director or shareholder in common with you

CSA	the specific document headed 'Client Services Agreement' which we have sent to you and which comprises part of the Terms of Business
Day 1 Rights	rights under the AWR which a hirer must apply to an Agency Worker from the first day of an assignment, under R.12 (right to shared facilities) and under R.13 (right to be informed of relevant job opportunities in the same way as directly recruited comparable workers)
Data Protection Laws	the EU Regulation 2016/679 (General Data Protection Regulation) and any data protection legislation applicable from time to time in the UK
DTOB	this document comprising our current terms and conditions
End User	any third party to whom you provide information concerning a Candidate following an Introduction and for whose benefit the Candidate provides any services and any associate (as defined by s.435 Insolvency Act 1986) of that third party
Engagement	an engagement, arrangement or employment, of any description (including as defined by s.13(1)(a) of the Employment Agencies Act 1973) under an Assignment or otherwise, whether direct or indirect, express or implied, including an Offer, under which a Candidate is due to provide or provides any services for your benefit or to an End User including, but not limited in meaning to, an engagement or employment which is temporary or permanent in nature or through the intermediary of a limited company or by contract through a third party, and 'Engage' and 'Engaged' shall have corresponding meaning
Expenses	any expenses you have agreed to pay
Fees	the payment due for the Services and 'Fee' shall have corresponding meaning
Fee Period	the longer of (a) any time after an Introduction where the Introduction was the effective cause of the Engagement, or (b) during the later of 9 months after <ul style="list-style-type: none"> (i) an Introduction relating to the Candidate, or (ii) the last Assignment of the Candidate
Fee Scales	as set out in the CSA and references to any of Fees 1 to 4 are references to the Fees described therein
Introducer	an employment agency as referred to in the Conduct Regulations
Introduction	the provision of information by us or by a Candidate, whether or not such information includes the Candidate's name, that enables you to identify a Candidate or relating to a Candidate already identified, including all negotiations between the Parties relating to a Candidate and 'Introduce' shall have corresponding meaning
Offer	an offer to Engage the Candidate communicated either by you or us at your request and which is accepted by the Candidate
Opt Out Notice	a notice of opt out under R.32(9) of the Conduct Regulations
Party	you or us, together referred to as 'Parties'
Payment Terms	the terms in clause 4.3
Permanent Placement	an Assignment where the Candidate is Engaged by you or an End User for regular employment, whether on a full or part time basis, not being a Temporary Placement or a Temporary Supply
Privacy Notice	our privacy notice made pursuant to the Data Protection Laws from time to time
Remuneration Requirement	any payment for the services of the Candidate under an Engagement calculated in accordance with Section 3 a request from you in any form for our Services
R.5 Rights	the rights an Agency Worker has to the same terms and conditions in force in your business relevant to others doing the same job, as set out in R.5 AWR
Services	to locate, introduce and/or supply Candidates for you in accordance with your Requirements
Social Media	any electronic means of processing, viewing, obtaining or exchanging information or communications about persons through use of the internet or web based technologies/applications, electronic platforms or any telephonic (mobile or otherwise) messaging system
Special Terms	any Special Terms in the CSA
Supplier	an employment business as referred to in the Conduct Regulations

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Temporary Placement	an Assignment where the Candidate is Engaged by you or an End User on a temporary basis, not being a Permanent Placement or a Temporary Supply
Temporary Supply	the temporary supply to you of a Candidate who or which we employ or otherwise engage either directly or indirectly through a third party.
Total Cost	the total cost referred to in Fees 3 of the CSA

Section 2 - general obligations, information and introductions

- 2.0 We agree to use our reasonable endeavours to provide the Services.
- 2.1 You agree to accept our Services and you acknowledge and agree
- (a) the Conduct Regulations and other 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 set out in Schedule 1 to us together 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, for example where you are in the process of applying for the required authorisation
- (d) to ensure that all information you provide to us is full and accurate.
- 2.2 You also agree
- (a) if we Introduce a Candidate to you but you have previous knowledge of the Candidate such that you believe that we are not entitled to any Fee it is important that you notify us in writing within the notification period specified in the CSA, or, if no period is specified, within 3 working days of the earliest date upon which you are able to identify the Candidate from information provided under the Introduction, together with supporting documentary evidence. You agree that in the absence of your notification to us an Engagement by you shall be deemed to have resulted from and be effectively caused by our Introduction and you waive the right to rely on such previous knowledge as a reason for non-payment of any Fee and our entitlement to a Fee shall not be affected by any arrangement for a fee or otherwise that you may have with a third party relating to the same Candidate; it is your sole responsibility for checking whether a Candidate has been previously introduced by another party
- (b) to tell us if you are using any Social Media for the purposes of recruitment of persons to fill positions that you have asked us to fill and for the avoidance of doubt where we have Introduced a Candidate your decision to Engage the Candidate based on or resulting from the use of Social Media shall not disentitle us to our Fee
- (c) to keep us promptly informed of your intentions in relation to an Engagement of a Candidate throughout the Fee Period; for the avoidance of doubt we are entitled to our Fee for an Introduction regardless of the role or tasks to be performed or undertaken by the Candidate
- (d) wherever there is an Engagement (not being a Temporary Supply) for which, regardless of the circumstances, we believe (whether reasonably or otherwise) we are due a Fee, you shall within 7 days of our written request provide to us information to enable us 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.
- 2.3 Wherever there is an Assignment we shall endeavour to advise you of the details as soon as possible unless, in the case of a Permanent Placement, you have concluded negotiations with the Candidate direct. For the avoidance of doubt, whilst we may advise you of the details applicable to the placement of a Candidate those details are relevant only to record rates agreed for the purposes of our Fee and the other purposes for your use of the Candidate and not further or otherwise.
- 2.4 For the purpose of the Conduct Regulations where your Requirement is only for the Temporary Supply of a Candidate we shall be acting as a Supplier but for all other Requirements we operate as an Introducer.

Section 3 – remuneration

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- 3.0 Remuneration referred to in the Fee Scales, for the purposes of our Fee, is calculated as follows:
- (a) subject to clause 3.0(b), the total proposed or projected sum (whichever is higher), payable by you or an End User for the benefit of the services of a Candidate under an Engagement for one calendar year from the earlier of the proposed or actual commencement of the service, together with the value attributable by HM Revenue & Customs, or for the avoidance of doubt, would be attributed by HM Revenue & Customs were the benefit subject to tax in the UK, of all taxable benefits provided under the Engagement, such value in respect of any motor vehicle being not less than £7,500
 - (b) calculation is on an annualised basis, so that the same payment rate or charge applicable during the period of an Engagement which is projected to be for less than a full calendar year shall be deemed to apply as if the Engagement were to continue for a full year, whether or not the Engagement continues for a full year
 - (c) if you do not inform us of the relevant Remuneration within 14 days of our enquiry, or by any later date we raise an invoice, the Remuneration shall be deemed to be an amount calculated on the basis of the higher of
 - (i) the rate payable under the last previous Assignment, or
 - (ii) the highest amount or rate indicated by either you or us as payable for the services sought by you, or
 - (iii) the highest amount achievable in the market place for a person of similar experience to work in the position that has been filled - such amount is to be determined by us and based upon appropriate evidence.
- 3.1 In the case of an Offer, Remuneration shall be calculated on the projected sum contained within the Offer.
- 3.2 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.

Section 4 – fees and invoicing generally

- 4.0 You agree to pay our Fees and any Expenses in accordance with the Payment Terms without any deduction, set off or counterclaim, subject only to clause 6.3 and 6.4.
- 4.1 Our Fees are due and payable by you whenever you use a Candidate, an Offer is made, or we provide an Additional Service in respect of which we have agreed a Fee. For the purposes of these Terms of Business you 'use a Candidate' whenever there is an Engagement within the Fee Period, where
- (a) you Engage a Candidate (whether or not as an Assignment), or
 - (b) you introduce (by providing information or otherwise) a Candidate to an End User which enters into an Engagement of the Candidate.
- 4.2 The calculation of our Fees for Engagements and Assignments are set out in the Fee Scales subject to the following:
- (a) in the case of a Temporary Placement that is stated to be for a period of less than one year (whether or not intended to be renewed) we may, as a concession ('Concession'), instead of charging in accordance with Fees 2, at our sole discretion charge a single payment Fee under Fees 1 calculated on the actual Remuneration for the Temporary Placement for the stated period. The Concession shall only apply if we inform you in writing, and in that event the following variation of the Fee provision applies, without prejudice to any other provision:
 - (i) the percentage applicable under the Fees 1 shall be that relating to the Remuneration as if it were annualised, and
 - (ii) it is a condition that you pay the Fee based on the Concession within our Payment Terms, time being of the essence
 - (b) in the event that the period of the Temporary Placement under (a) is extended, the extension shall be a new Engagement and we may, at our sole discretion, either charge a further Fee based on the Concession as a new Temporary Placement under (a) of this clause, or charge under Fees 2 for the duration of the Temporary Placement, or charge a Fee under Fees 1 on annualised Remuneration for the further Engagement without giving any credit for sums already paid for the previous Engagement
 - (c) in respect of any Fee you shall not be entitled to any pro rata reduction for periods of hire of less than 1 year, unless the Engagement is an Assignment arranged through us and a director of ours has expressly agreed in writing to such a reduction.
- 4.3 The Payment Terms are as follows:
- (a) Fees for all Assignments, Expenses or Additional Services are payable within 14 days from the date of our invoice unless otherwise specified in the CSA or agreed in writing signed by a director of ours
 - (b) in the case of an Engagement where there is no Assignment, Fees are payable within 14 days of commencement of the Engagement, the sum due in respect of the Fee being a debt due to us whether or not we have submitted an invoice
 - (c) interest is due on any overdue sum calculated at the rate of 8% per month.
- 4.4 No Fee shall be chargeable for an Offer if, prior to commencement of a contract relating to the Offer, you withdraw the Offer for the reason that you have since come into possession of information which you have provided to us that the Candidate is wholly unsuitable for the position offered by you.
- 4.5 Fees for any Additional Service will be agreed with you and are payable on delivery of the service or at such other time as may be agreed in writing.
- 4.6 We may issue an invoice to you

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- (a) except in the case of an Offer, for the relevant Fee under each Engagement upon, or as soon as is appropriate after the commencement of the Engagement, or at any times or intervals agreed for payment in an Assignment
 - (b) for an Additional Service at the time agreed
 - (c) in the case of an Offer, at any time after the Offer.
- 4.7 All Fees are subject to value added tax which shall be charged in addition and, for the purpose of calculating our Fee, Remuneration in foreign currency will be calculated at the Bank of England Sterling exchange rate applicable on the date of our invoice.

Section 5 - terms applicable to Temporary Supply and AWR compliance

- 5.0 The provisions of Sections 5 to 10 apply where we act as a Supplier.
- 5.1 Where we supply a Candidate, in each case you agree as an on-going obligation throughout the Temporary Supply
- (a) to be responsible for the health and safety of the Candidate as if directly engaged by you, 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) before deploying the Candidate and at appropriate times during the Assignment 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 us in writing of any specific or potential hazards
 - (iii) ensure that any equipment or vehicles provided by you for use in relation to the Temporary Supply are in good order, suitable, safe and compliant with all relevant regulations and safety requirements
 - (iv) maintain adequate insurances including, but not limited to, Employer's and Public Liability Insurance which provides cover for Candidates under Assignment
 - (b) to ensure that the Candidate is aware of your or any End User's rules and any regulations applicable to external contractors
 - (c) as your sole responsibility to provide such instructions and suitable facilities to the Candidate as are necessary to enable the Candidate to perform services, and to monitor performance and compliance with such instructions to the extent reasonably necessary to ensure your objectives are being achieved, but without conflicting with any other provision in these Terms of Business
 - (d) to comply with any obligation to provide Day 1 Rights
 - (e) to allow us to suspend the services of the Candidate for the purposes of leave or sickness absence provided that we shall require the Candidate to notify you as soon as practicable of the reason for any absence
 - (f) by reason of clause 5.3(a) you shall not integrate the Candidate into your workforce or treat the Candidate as an employee or do any act or thing towards the Candidate which may be regarded as the act of an employer towards an employee, for any purpose, but not so that this shall prejudice your obligations in relation to health and safety, the AWR or other specific obligations under these Terms of Business
 - (g) by reason of clause 5.3(b) unless the nature of the work specifically requires that you supervise, direct or control the manner in which the Candidate provides services, you shall not and have no right to do so
 - (h) to refrain from discussing with the Candidate the terms of the Candidate's engagement with us, other than strictly as required for the proper objectives of the work required under the Assignment or as required by law.
- 5.2 Our contract with the Candidate shall include the following obligations:
- (a) to perform the work required under an Assignment in good faith with due care and skill, and not perform any work during the Temporary Supply for any third party which is in conflict with your interests
 - (b) where appropriate not to make use of your confidential information in terms similar to those set out in clause 11.1
 - (c) upon termination of the Temporary Supply to deliver up to either you or an End User any documents and other materials of yours or the End User's held by the Candidate.
- 5.3 You acknowledge and agree that
- (a) the Candidate is not intended to be nor is, during an Assignment, an employee of yours and that neither the Candidate nor you has any obligation to the other to perform or provide work for any specific period
 - (b) you have selected the Candidate due to the Candidate's skill, expertise and experience relevant to the work required under the Assignment and that you shall rely thereon for all purposes.
- 5.4 To facilitate compliance with the AWR you agree the following:
- (a) prior to the commencement of a Temporary Supply or as soon as is reasonably practicable thereafter you agree to provide us with the AWR information set out in Schedule 1 so we can check whether a Candidate has previously worked for you and those current terms and conditions that apply as Comparator Terms
 - (b) if requested to do so by us answer any additional questions relevant to AWR rights that we may raise
 - (c) you are responsible for informing us if the Comparator Terms change at any time
 - (d) you acknowledge that we shall be entitled to increase our charge to you to reflect any increased value which should accrue to a Candidate as a result of a change in the Comparator Terms

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- (e) liability under the AWR may attach to either Party in the event that R.5 Rights are not correctly provided; accordingly you recognise that we may rely upon the AWR information you provide and we cannot accept liability in the event of a claim by a Candidate resulting from any inaccuracy in the information provided
- (f) to comply with your obligations under the AWR, including in respect of Day 1 Rights, and R.17 of the AWR
- (g) not to discriminate against a Candidate who is pregnant, has recently given birth or is breast feeding, and in particular take all reasonably practicable steps to make any reasonable adjustments or modifications to remove or reduce the health and safety risk to acceptable levels, including considering whether there are any other suitable roles within your organisation for which the Candidate can be supplied by us and advise us accordingly.

Section 6 – fees and records for Temporary Supply

- 6.0 For the period of supply our Fee will be calculated in accordance with Fees 3 of the Fee Scales, time spent being in accordance with records of time worked and/or services provided by the Candidate and material costs, if any. For the avoidance of doubt we shall be entitled to increase our Fee for supply under a Temporary Supply to account for additional costs of supply incurred as a result of
 - (a) compliance with statutory requirements, (whether specific to a particular Candidate, or applicable to our business or part of it) including, but not limited to, the National Minimum Wage, the AWR, statutory holiday entitlement, National Insurance contributions, the Apprenticeship levy as set out in part 6 of the Finance Act 2016 or the level of pension contribution applicable to a Candidate
 - (b) imposition of, or changes to existing, sectoral guidance or conditions with which suppliers to that sector are generally expected to comply.
- 6.1 You agree at the end of each week, to verify and confirm a correct record of hours worked by the Candidate, whether using the Candidate's time record or your own or, in the case of project work services chargeable upon deliverables, verify the objectives achieved at the relevant time on records provided by the Candidate or us; in either case your confirmation or authorisation, whether by way of signature or otherwise, is conclusive evidence of the acceptance of time spent and/or works undertaken by the Candidate for the relevant period.
- 6.2 You agree to keep the records referred to under clause 6.1 until all matters under the Temporary Supply are concluded, not being less than 6 months after the end of the Temporary Supply.
- 6.3 Without prejudice to clause 6.1, in the event of any query or dispute relating to the hours worked or services delivered which we believe are chargeable, both Parties shall co-operate in good faith with a view to resolving the issue promptly, and each Party shall promptly provide to the other the evidence to support its position.
- 6.4 Where you comply with clause 6.3 and you have first paid to us the amount due for the relevant undisputed time or other element, we agree that you may withhold a disputed amount for a period of 21 days or such longer period as we may agree, to enable the dispute to be resolved without prejudice to our entitlement to interest for late payment or our entitlement to issue an invoice and/or commence proceedings for recovery of our Fee.
- 6.5 For the avoidance of doubt
 - (a) your failure to verify or sign a record in accordance with clause 6.1 shall amount to a breach of contract and you shall not be entitled to refuse payment to us on the sole basis of such failure or alleged dissatisfaction with the quality of work
 - (b) notwithstanding any dispute, we are entitled to raise an invoice for our Fee, and in the event of failure to make payment we are entitled to and shall rely on clause 4.0.

Section 7 – capacity and fees for Temporary Supply requirements

- 7.0 Where a Requirement is for an Introduction of a Candidate who may be supplied by us on a Temporary Supply
 - (a) because you acknowledge that you may at any time employ the Candidate, the Requirement shall be and shall be treated by both Parties as, a requirement for a Permanent Placement in respect of which our capacity is as an Introducer until such time as you agree all the terms of the Temporary Supply in relation to the Candidate at which time our capacity shall be as Supplier until the end of the Temporary Supply
 - (b) the fact of termination of a Temporary Supply shall constitute a Requirement by you for a further Introduction of the Candidate concerned in our capacity as an Introducer (although there is no obligation upon you to employ or engage the Candidate) and for the avoidance of doubt our capacity as a Supplier shall cease on such termination
 - (c) in relation to applicable terms for Fees
 - (i) Section 6 applies to Fees for the Temporary Supply
 - (ii) this Section 7 and Section 8 apply to other Fees and arrangements in place of any other Fees related terms other than Payment Terms.
- 7.1 If there is an Engagement before, during or after a Temporary Supply (notwithstanding clauses 8.0 and 8.1) we are entitled to charge whichever is the greater of
 - (a) a Fee as an Introducer under the provisions in clause 4.1, or
 - (b) any Transfer Fee which may be due under Section 8 (in our capacity as a Supplier).

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Section 8 – fees on transfer and additional arrangements

- 8.0 This Section 8 applies only where we have Introduced a Candidate to you for the purposes of supply and clauses 8.4 to 8.8 do not apply where there is an Opt Out Notice in respect of the Candidate.
- 8.1 Where a Candidate we have Introduced to you is Engaged, and the Engagement is not a Temporary Supply, you shall pay us a Fee ('Transfer Fee').
- 8.2 The Transfer Fee shall be calculated
- under Fees 4 where the Engagement is during or after a Temporary Supply and within the Transfer Period as defined in clause 8.3
 - under Fees 1 where there has been no Temporary Supply and the Engagement is within the Fee Period
- 8.3 The Transfer Period is either
- where there is an Opt Out Notice in respect of the Candidate, the Fee Period, or
 - where there is no Opt Out Notice, that period within the later of
- 14 weeks from the first day of supply by us of the Candidate to you (disregarding any supply that ended more than 42 days prior to any new supply), or
 - 8 weeks after the last day of supply.
- 8.4 Without prejudice to the provisions of Section 7, no Transfer Fee shall be due if all of the following conditions are complied with:
- you give us written notice that you elect to take the Candidate under a Temporary Supply for 12 months or such other period as we may agree ('Supply Period')
 - except for a Temporary Supply, you have not already Engaged the Candidate at the time the notice in clause 8.4(a) is given to us
 - you agree the notice is your unconditional agreement to Engage the Candidate as elected on the terms set out in clause 8.5 ('Optional Supply')
 - the Optional Supply continues for the Supply Period without any breaks save for statutory breaks or other breaks similar to those allowed under any immediately preceding Temporary Supply of the Candidate except where we are at fault in failing to supply the Candidate
 - you comply with the terms of the Optional Supply in all respects and there is no material breach of these Terms of Business by you.
- 8.5 Subject to clause 8.6, the terms of the Optional Supply are
- the same terms as those that applied to the last preceding Temporary Supply of the Candidate where applicable, or
 - where there has been no preceding Temporary Supply of the Candidate, and at your request we are only acting as Supplier not as Introducer at the time of the notice under clause 8.4(a), all the terms herein that apply to a Temporary Supply, the Fee being under Fees 3 and the Charge being 25% of Total Cost.
- 8.6 The terms of the Optional Supply may be amended by written agreement and in any event we shall be entitled to increase our Fee where we are required, either by the Candidate or by statutory requirements, to increase our payment to or relating to the Candidate. The increase in Total Cost to reflect such sum as is required, but we shall not be entitled to increase the amount of the Charge element of the Total Cost.
- 8.7 Where an Optional Supply follows a Temporary Supply
- your agreement to any alternative terms or increase in Fee is your unequivocal acceptance that the different terms do not represent terms that are less favourable to you than under the last preceding Temporary Supply of the Candidate
 - if, despite your agreement in clause 8.7(a), you later maintain that the terms are less favourable to you, the period of supply, which would otherwise have been regarded as an Optional Supply, shall be regarded as a period of new supply and shall be a new Temporary Supply to which all the provisions in these Terms of Business, including this Section 8, apply.
- 8.8 For the avoidance of doubt
- we shall not be at fault in failing to supply the Candidate under an Optional Supply if the Candidate does not provide services because the Candidate is not ready, willing or able to do so, or if the services are not provided or the Optional Supply is terminated due to a material breach of these Terms of Business by you
 - if an Optional Supply is ended prematurely for any reason other than our own fault you shall not be entitled to any discount against the Transfer Fee should you then Engage the Candidate other than under an Assignment for which we are due a Fee, and we may at our discretion either issue an invoice for the Transfer Fee or for the balance of Fees due to us as if the Optional Supply had continued for the agreed term
 - no Fee for an Introduction or Transfer Fee is due where there has been an Optional Supply which fully complies with the conditions of this Section 8.

Section 9 – special provisions for Candidates in business on their own account

- 9.0 We may from time to time supply workers to you who are in business on their own account and the provisions in this Section 9 address important issues relevant to business suppliers.
- 9.1 Where we believe a Candidate we are to supply is self-employed or operates through a company we may ask you to confirm whether, notwithstanding your agreement in clause 9.2(b)(ii), you intend to supervise, or direct, or control how the Candidate does the

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- required work; you agree that if you should respond indicating that you do not intend to supervise, or direct, or control how the Candidate does the required work we shall be entitled to rely upon your confirmation to that effect as conclusive but you may at any stage inform us that your intention has changed.
- 9.2 Where a Candidate we supply is a company or operates through a company and we have informed you of the existence of the company, it is agreed that
- (a) provided that the role does not involve working with vulnerable persons as defined by the Conduct Regulations, we will normally have received an Opt Out Notice; accordingly you acknowledge that we have received an Opt Out Notice unless we inform you otherwise
 - (b) unless expressly stated otherwise in relation to a Temporary Supply
 - (i) none of the parties to the arrangement intend that a representative of the company ('Representative') shall provide any services in the capacity of a director or office holder of you or the End User, whether formally appointed as such or otherwise
 - (ii) neither you nor an End User shall supervise, direct or control the Representative in any respect but for the avoidance of doubt this provision shall not prevent you or an End User from providing instructions to enable the Representative to understand the scope and requirements for the work to be done, or verifying that time has been worked or milestones achieved
 - (c) the company may substitute the Representative initially named to undertake work for the company with an alternative person, provided that you have given your prior written consent to do so, which consent you agree not to unreasonably withhold in the case of a suitably qualified individual who meets your criteria for the role.
- 9.3 Wherever we supply a Candidate to you who as an individual is either carrying on a profession or a business undertaking, you agree the following:
- (a) without affecting the arrangements for supply and payment through us, your status in relation to that individual is as a client or customer of that profession or business undertaking so carried on, and the individual is not an Agency Worker by virtue of R.3(2)(b) of the AWR; accordingly in these circumstances we agree to inform you of the profession or business undertaking so carried on, and where we do so, subject to clause 9.3(b), clause 5.4 shall not apply
 - (b) where we inform you that the individual is carrying on a profession or business undertaking, it will be our reasonable belief from information provided to us by the Candidate that this is the case; accordingly should you become aware of any circumstances leading to the conclusion that the Candidate is not in fact carrying on a profession or business undertaking, clause 5.4 shall apply and you must inform us immediately and provide us with the information as required therein.
- 9.4 In respect of a Temporary Placement where the Candidate operates as a company, as the Engagement is direct and not a supply by us, you are solely responsible for any compliance with AWR or tax requirements that may apply to your direct relationship with the Candidate.
- 9.5 Nothing in this Section 9 shall prevent you or an End User from providing reasonable instructions related to the work, or require adherence to policies applicable to external contractors including but not limited to health, safety or security.
- 9.6 You agree that in the event that you, or an End User are a Public Authority as defined by s.61L of the Income Tax (Earnings and Pensions) Act 2003 (as amended), and you provide us with your or the End User's conclusion that the conditions in s.61M((1)(d)(i) or (ii) are not met, (whether using those specific words or otherwise words to that effect) we shall be entitled to rely upon that conclusion in our payment arrangements with the Candidate, and should the conclusion be inaccurate you shall indemnify us and keep us so indemnified against any claims or demands including costs of dealing with the same made by any government or regulatory body.

Section 10 – suspension and termination of Temporary Supply

- 10.0 We may at our sole discretion suspend or terminate a Temporary Supply immediately without liability and without prejudice to any right for relief if
- (a) you are in breach of any of these Terms of Business herein, or, being an Optional Supply you are in material breach of these Terms of Business
 - (b) we form the opinion for any reason, which need not be reasonable, that
 - (i) you may not meet your obligations to us or a Candidate, or
 - (ii) the Candidate may no longer be willing, able or suitable to undertake work for you
- and in any case under this clause 10.0 you agree we are not at fault and you accept that we have taken a prudent commercial step to avoid loss or potential loss.
- 10.1 One Party may terminate a Temporary Supply by giving notice to the other
- (a) of the notice period where a notice period is agreed for termination, and if notice of termination is given by you the Fee for the period of such notice shall be paid by you whether or not you utilise the services of the Candidate for that period
 - (b) if the other shall commit an insolvency event, namely that it becomes insolvent within the meaning of the Insolvency Act 1986 or has a receiver appointed or an order or resolution made to wind it up or enters into any arrangement or composition with its creditors or passes a resolution to cease trading or actually ceases trading or being an unincorporated body is dissolved or declared bankrupt

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- (c) if we have agreed to introduce a suitable alternative Candidate but fail to do so within the agreed period.

Section 11 - confidentiality and non-solicitation

- 11.0 You shall keep any information comprising an Introduction confidential and not use it for any purpose other than that disclosed by you to us at the time the information was requested; in particular you shall not directly or indirectly induce nor seek to induce a Candidate that is engaged by contract to us to terminate such contract for any reason and it is agreed that should you be in breach of this provision you shall be liable to us for liquidated damages for each breach in the sum of £10,000 being estimated damages that you agree are reasonable for our loss.
- 11.1 Subject to clause 11.2, no Party shall divulge to any other person, or use for its own benefit, any information capable of being confidential relating to the affairs or business or business methods of the other, or confidential information, received from the other, except that which is in the public domain or is trivial or obvious or authorised to be released or required by Court Order to be disclosed.
- 11.2 You acknowledge that the information you have provided to us may be disclosed to third parties involved in the supply of Candidates to you with whom we may deal, including, but not limited to, Candidates.
- 11.3 No Party ('the First Party') shall, for the duration of these Terms of Business or for a period of 12 months following the termination of an Assignment, directly or indirectly solicit or entice into their employment any person employed by the other party ('the Second Party') with whom the First Party has had any dealings arising from these Terms of Business, without the Second Party's prior written consent.

Section 12 - data protection

- 12.0 You acknowledge and agree that
- (a) save where expressly agreed otherwise in writing, the capacity of each Party under this agreement shall be that of Data Controller, and each Party shall be responsible for its own compliance with the Data Protection Laws
- (b) the service we provide may involve the provision by us of Personal Data including information relating to Candidates, our staff or third parties with whom we have dealings in respect of our services. This Personal Data may include CV's, information relating to suitability, qualifications and experience, work records and absence information, and may in some cases include sensitive Personal Data where we consider it necessary. This information is provided for the purposes of evaluating Candidate suitability, administering placements and compliance with our obligations
- (c) you will hold any Personal Data we provide securely, and confidentially and shall not use it or any part of it for any unlawful purpose, nor any purpose unrelated to the provision by us of our services, and specifically, you shall not
- (i) provide the Personal Data to any person other than the person to whom we have submitted the Personal Data in the first place
- (ii) include the Personal Data in any data or subsets of Personal Data nor use it for any marketing, advertising or other promotional purpose
- (d) should any Candidate we supply be required to process Personal Data on your behalf, it shall be your responsibility as Data Controller to ensure that appropriate data sharing provisions are in place, although we may provide assistance in this respect
- (e) you shall co-operate with us in the event of any request by a Data Subject to enforce any rights under the Data Protection Laws, any complaint, or investigation by the Information Commissioners Office or any other regulatory body or supervisory authority.
- 12.1 You warrant that
- (a) you will at all times comply with applicable Data Protection Laws in respect of any Personal Data provided by us to you
- (b) you have appropriate technical and organisational measures within your organisation, including but not limited to measures which protect against the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data
- (c) any Personal Data you provide to us will be lawfully obtained, compliant with the Data Protection Laws
- (d) you have drawn the attention of any staff deployed by you to interface with us to our Privacy Notice.
- 12.2. References within this section to Personal Data, Controller, Processor and Data Subjects shall be as defined in the Data Protection Laws.
- 12.3 The restrictions within clause 12.0(c) shall cease to apply to Personal Data processed in relation to a relevant Candidate following employment of the relevant Candidate by the person to whom we originally submitted the Personal Data.

Section 13 – liability

- 13.0 You shall at all times comply with all applicable laws and regulations relevant to your relationship with us or a Candidate, including but not limited to the AWR, the Equality Act 2010 and the Data Protection Laws and you agree that you shall not take any action which would cause us to be in breach of our obligations under any applicable legislation.
- 13.1 By reason of your agreement to clauses 2.1 and 5.3(b) we shall not be liable for any loss or damage arising out of any representation, including any mistake or misrepresentation, made by us in good faith that may have induced you to accept an Assignment, or for any breach of contract, negligence or tort of the Candidate.

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- 13.2 Neither we nor our staff shall be liable to you for any loss, damage, delay or compensation of any kind whether in contract or tort, or for breach of the Conduct Regulations, the AWR or the Data Protection Laws by any person other than us, which may arise out of these Terms of Business or an Assignment, save to the extent that exclusion of liability is prohibited by law.
- 13.3 Without prejudice to clauses 13.1 and 13.2, other than where liability cannot be limited by law, our liability shall in any event be in respect of direct losses only, and limited to the amounts as specified in the CSA, or if no such amount is specified, liability shall not exceed £1million and be limited in the case of
- (a) a Permanent Placement to the lower of repayment of our Fee, or £100,000
 - (b) a Temporary Placement to our Fee under Fees 2 for one month
 - (c) a Temporary Supply to a sum equivalent to the Charge under Fees 3 payable for one month under the relevant Assignment.
- 13.4 You shall indemnify us and keep us fully indemnified against any claims or demands including costs of dealing with the same
- (a) arising from incorrect or incomplete information provided by you to us, including a failure to provide us with any information as requested by us, or required by statute, and brought or made by a Candidate or any other business with which we have been dealing in relation to a Requirement, or any government or regulatory body
 - (b) arising out of any breach of these Terms of Business
 - (c) brought or made by you in relation to any matter under clause 13.1.
- 13.5 You agree to pay our costs reasonably incurred related to recovery of any Fee which is properly due from you but unpaid.
- 13.6 You agree that the liability terms and limits set out in this Section 13 are reasonable.

Section 14 - other terms

- 14.0 An Engagement during Fee Period (b) as defined is deemed to be as a result of the relevant Introduction regardless of any information relating to the Candidate you may have received from any third party unless you have correctly notified us in accordance with clause 2.2(a); accordingly, and for the avoidance of doubt, there is no implied term that an Introduction must be the effective cause of an Engagement.
- 14.1 Our entitlement to a Fee or payment and the clauses related thereto survive any termination of our Services.
- 14.2 You are solely responsible for
- (a) paying all Candidates except where we supply a Candidate under a Temporary Supply, and
 - (b) for complying with all contractual and regulatory matters including health and safety relevant to a Candidate.
- 14.3 Unless you have notified us otherwise prior to the commencement of an Assignment, you warrant that there are no circumstances relevant to the work, or any aspect of an Assignment, which may result in the Candidate suffering a detriment of any kind.
- 14.4 Whilst at all times we shall act in good faith we give no guarantee or warranty that we will be able to locate any suitable Candidate, or that any Candidate we introduce is suitable for your purposes at any time.
- 14.5 Where a Candidate who is not an employee of yours is required to live away from home in order to work for you, you agree to arrange suitable accommodation for the Candidate and pay the travel costs to and from that accommodation, unless otherwise agreed with us.
- 14.6 We are authorised by you to advertise in any medium we deem appropriate to source Candidates where you have issued a Requirement to us.
- 14.7 For the avoidance of doubt
- (a) subject only to a variation under clause 15.8 the provisions and Fees in the CSA apply save that where a provision conflicts with a provision in the DFOB, the DFOB shall prevail
 - (b) an Assignment is not a variation to these Terms of Business
 - (c) details which we agree should apply to an Assignment vary terms only to the extent specified relevant to that Assignment and do not apply further or otherwise.

Section 15 - general terms

- 15.0 Where times are referred to herein such times are of the essence.
- 15.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999 the Candidate has the benefit of clauses 5.1(a) to (e), 14.2 and 14.3, and it is the intention that you should be able to directly enforce against the Candidate the obligations of the Candidate towards you that are contained in the agreement between us and the Candidate. Other than for third party rights specifically conferred in or under these Terms of Business, the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 15.2 Where we notify you of an update to these DFOB it is your responsibility to check the applicable terms.
- 15.3 Any notice under these Terms of Business shall be in writing and sent to the addressee at the last known address by first class post, fax or to a default email address specified by us for the purpose. Where no default email address is specified by us you may not provide notice to us by email. Notice shall be deemed to have been received, in the case of post on the postal delivery date following the date of posting, in the case of fax on the date of transmission, and in the case of email on the date of acknowledgement of receipt.

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- 15.4 The definitions and meanings herein apply throughout; words importing one gender include all other genders and words importing the singular include the plural and vice versa; headings are for guidance purposes only; each portion of these Terms of Business, defined by punctuation, paragraphs, sections or numbering, is separate, distinct and severable and to give meaning to the intention herein the Court may modify any portion that may otherwise be void; subject thereto, any void portion may be severed and the remaining provisions shall continue in full force and effect.
- 15.5 Any reference to a statute regulation or statutory provision shall include reference to any amendment thereto and to any subordinate legislation or modification thereto at the relevant time.
- 15.6 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.7 Save for any Special Terms and subject to clause 14.7(c), these Terms of Business comprise the sole and entire agreement between the Parties relating to the business described, supersede any previous terms issued by us, and override any terms proposed by you, and you acknowledge that you have not relied on any representations made by us that are not set out in these terms.
- 15.8 Subject to clause 14.7(c) these Terms of Business may not be varied except
- (a) by us in providing you with notice of an updated published version of these DTOB, which will be deemed to apply unless you notify us in writing that you do not accept the updated version within 7 days of receipt of the notice
 - (b) by agreement (whether orally or otherwise) and confirmed in writing signed by a director of ours, or by Special Terms set out in a CSA or a variation to a CSA; any terms provided by you to us and included within any request for services shall not apply unless we expressly agree the same in writing signed by a director of ours and no other action by us shall imply acceptance by us of any such terms; no notice of termination by either party shall have any effect other than to end the provision of our services.
- 15.9 You are not entitled to assign these Terms of Business to any other party without our express written authority to do so, but we may assign these Terms of Business upon giving notice to you, and we may assign or subcontract elements of these Terms of Business, including debt, payment or invoicing arrangements without any requirement for formal notice to you.
- 15.10 The laws of England and Wales govern these Terms of Business and the English Courts shall have sole jurisdiction.

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SCHEDULE 1 INFORMATION REQUIRED

Requirement information – clause 2.1

Sufficient information to enable us to seek a Candidate including

- the position to be filled and date for commencement
- nature of the work and/or position required
- working conditions and location
- proposed salary and/or other payment terms
- issues relating to health and safety relevant to any Candidate
- minimum experience, certifications and qualifications required for a Candidate to be acceptable for the position
- confirmation that you have all necessary licences and consents required for the proposed work
- any other information which may be relevant to the decision of a candidate to accept the position

AWR information – clause 5.4

Previous work - if the Candidate we supply or propose to supply has previously worked for you, details of any previous work engagement/s where the Candidate's previous engagement ended (a) why it ended and/or (b) within the previous 6 months, the details in either case including the dates of the engagement, the capacity in which the Candidate was engaged, and the reason for the engagement ending.

Comparator Terms - information to enable us to determine the Comparator Terms relevant to the job or jobs referred to in the Requirement.

This information may be provided to us by completing any form we provide.