

## **Terms of Business**

### **1. Definitions**

1.1. In these terms of business, the following definitions shall apply –

<b>"Agency Worker"</b>	means a Representative who works temporarily for and under the supervision and direction of Client or of End User, as is further defined within the AWR;
<b>"Assignment"</b>	means the period during which Representative renders Representative Services to Client;
<b>"Assignment Confirmation Schedule"</b>	means the document given by ERG to Client confirming the details relating to an Assignment and Representative Services in a format similar the example attached as Schedule 1 to these Terms;
<b>"AWR"</b>	means the Agency Workers Regulations 2010 (as amended);
<b>"Candidate"</b>	means the person or company Introduced by ERG to Client including, but not limited to, any officer or employee of the Candidate if the Candidate is a limited company, any member or employee of the Candidate if the Candidate is a limited liability partnership, and members of ERG's own staff;
<b>"Client"</b>	means the person, firm or corporate body together with any subsidiary or associated company (as defined by s. 1159 of the Companies Act 2006) to whom ERG Introduces or supplies the Candidate/Contractor/Representative;
<b>"Conduct Regulations"</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);
<b>"Contractor"</b>	means the company who provides the Representative to render services to Client under these Terms;
<b>"Contractor Services"</b>	means recruitment services performed by ERG relating to the introduction and supply of persons and/or companies to undertake tasks for the benefit of Client on a temporary basis;
<b>"End User"</b>	means the company under whose supervision and direction the Agency Worker temporarily works for during the Assignment;
<b>"Engagement"</b>	means the engagement, employment or use of the Candidate / Representative by Client (or by any third party to whom or to which the Candidate/Representative was introduced by Client (whether with or without ERG's knowledge or consent)) on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement, or through any other engagement directly or through a limited company of which the Candidate / Representative is an officer or employee or through a limited liability partnership of which the Candidate/Representative is a member or employee, or indirectly through another employment business or company which holds itself out as

	such, and "Engage", "Engages" and "Engaged" shall be construed accordingly;
<b>"Extended Hire Period"</b>	means a period of 12 months;
<b>"Fees Schedule"</b>	means the schedule set out at the end of these Terms headed "Fees Schedule";
<b>"Introduced"</b>	means - <ul style="list-style-type: none"> <li>i. Client's interview of a Candidate in person or by telephone; or</li> <li>ii. the passing to Client of a curriculum vitae or other information which identifies a Candidate; whichever is earlier and "Introduces" and "Introduction" shall be construed accordingly;</li> </ul>
<b>"Introduction Fee"</b>	means as set out within the Fees Schedule;
<b>"Payment Terms"</b>	28 days of the date of the invoice;
<b>"Perm Services"</b>	means the recruitment services performed by ERG relating to the introduction of persons for the purpose of direct employment with the Client;
<b>"Qualifying Period"</b>	means as defined within regulation 7 of the AWR;
<b>"Quarantine Period"</b>	means 12 months or where applicable the "relevant period" set out within regulation 10(5) of the Conduct Regulations;
<b>"Remuneration"</b>	means base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, shift allowances, location weighting and call-out allowances, the benefit of a company car and any other benefit or allowance whether taxable or not; where a company car is provided, a notional amount of £5000.00 will be added to the salary in order to calculate ERG's fees;
<b>"Retained Fee"</b>	means the payment structure for the Introduction Fee as set out within the Fees Schedule;
<b>"Representative"</b>	means the employees, officers or representatives of Contractor as specified in the Assignment Confirmation Schedule who renders the Representative Services;
<b>"Representative Services"</b>	means work/task to be performed by Representative as set out within Assignment Confirmation Schedule;
<b>"Services"</b>	means the services to be performed by ERG in relation to Perm Services and/or Contractor Services and/or Consultancy Services (as applicable)
<b>"Terms"</b>	means these terms of business together with the Fees Schedule and shall include any Assignment Confirmation Schedules issued pursuant to these terms of business;

**"Timesheet"** means the electronic timesheet system, or other such time recording method as may be agreed in writing between the parties, in relation to time worked by Representative; and

**"Transfer Fee"** Fees payable by the Client where there is engagement of a Candidate introduced by ERG, which does not adhere to standard terms and conditions within this agreement.

## **2. These Terms**

- 2.1. For the purposes of these Terms, ERG acts as an employment business as defined within the Conduct Regulations when providing Contractor Services and ERG acts as an employment agency as defined within the Conduct Regulations when providing Perm Services.
- 2.2. These Terms including the Schedules contain the entire agreement between the parties in relation to the subject matter hereof and, unless otherwise agreed in writing, these Terms prevail over any previous terms of business, agreement, representations whether written or oral including without limitation any terms of business, purchase conditions or other documents put forward by Client.
- 2.3. Headings contained in these Terms are for reference purposes only and shall not affect the intended meanings of the clauses to which they relate. As used in these Terms, words denoting the masculine gender include the feminine and neuter and vice versa and words denoting the singular include the plural and vice versa.
- 2.4. These Terms shall be deemed to be accepted by Client and to apply by virtue of (a) an Introduction to Client of, or the Engagement by Client of, a Candidate or (b) the passing of information about the Candidate by Client to any third party or (c) Client's interview or request to interview a Candidate or (d) Client's signature at the end of these Terms or (e) any other written, expressed acceptance of these Terms or (f) the signature or approval by Client of a Timesheet relating to services rendered by a Representative. For the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by Client for the same type of work as that for which the Introduction was originally effected.
- 2.5. Where there is a conflict of provisions between these Terms, the Fees Schedule and the Assignment Confirmation Schedule, then the Fees Schedule and then the Assignment Confirmation Schedule shall take precedence.
- 2.6. No variation to these Terms shall be valid unless approved by a director of ERG.
- 2.7. Whereupon Client authorises ERG to act on its behalf in seeking Candidates (whether verbally or in writing) and, if Client so requests, shall advertise for Candidates through such additional methods as are agreed with Client at Client's exclusive cost.
- 2.8. Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 2.9. Save as otherwise stated in these Terms, ERG, Contractor and Representative shall be entitled to supply its/their services to any third party during the term of these Terms provided that this in no way compromises or is not to the detriment of the supply of the Services/Representative Services and provided there is no conflict of interest.

## **3. Obligations and provisions relating to Perm Services**

- 3.1. ERG shall use reasonable endeavours to introduce Candidates to Client who meet Client's

requirements and shall take steps to ascertain that the information provided by ERG to Client in respect of the Candidate is accurate. ERG accepts no responsibility in respect of matters outside its knowledge and Client must satisfy itself as to the suitability of the Candidate.

- 3.2. Client shall satisfy itself as to the suitability of the Candidate and Client shall take up any references provided by the Candidate to it or ERG before engaging such Candidate. Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, checks relating to criminal convictions including criminal records checks as may be required, qualifications or permission required by law of the country in which the Candidate is engaged to work and any other checks Client may require.
- 3.3. To enable ERG to comply with its legal obligations Client undertakes to provide to ERG details of the position which Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position; and any risks to health or safety known to Client and what steps Client has taken to prevent or control such risks. In addition, Client shall provide details of the date Client requires the Candidate to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with Client.
- 3.4. Client agrees: -
  - 3.4.1. to notify ERG as soon as possible (and in any event, not later than 7 days of the date of the offer or of the date the Engagement takes effect, whichever is earlier) of any offer of an Engagement which it makes to the Candidate; and
  - 3.4.2. to notify ERG immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration to the Candidate; and
  - 3.4.3. to pay ERG in accordance with the Payment Terms.

#### **4. Obligations and provisions relating to Contractor Services**

- 4.1. ERG shall use reasonable endeavours to introduce Candidates to Client who meet Client's stated requirements.
- 4.2. Where ERG and Client have agreed that ERG will supply Client with the services of a particular Contractor and/or Representative (as is applicable), ERG shall provide Client with an Assignment Confirmation Schedule confirming the name of Contractor, the name of Representative, the agreed charge rate(s), term of the Assignment, description of Representative Services, notice periods and any other relevant details communicated and agreed between the parties.
- 4.3. ERG shall use reasonable endeavours to ensure that Contractor enters into an agreement which contains an obligation on Contractor that (a) Contractor and/or Representative (as is applicable) co-operates with Client and complies with all Client's reasonable and lawful instructions; (b) the ownership of all intellectual property (of whatever nature and, if capable of registration whether registered or not) in all documents or other material and data or other information and devices or processes created by Representative in the provision of Representative Services, shall vest in Client; (c) Contractor and/or Representative (as is applicable) keeps confidential all information clearly marked confidential or stated as such in writing by Client obtained during the Assignment concerning

Client's organisation activities, product and business affairs.

- 4.4. To enable ERG to comply with its legal obligations Client undertakes to confirm in writing to ERG information including (without limitation), the date upon which Candidate is required to commence the provision of Representative Services; the expected duration of Assignment; the nature of and/or specifics of the services required to be provided by Candidate; the location/s Candidate is expected to deliver Representative Services; the number of hours/days and any specific time-keeping and recording requirements Client expects of Candidate; any experience, training, qualifications, professional body authorisations Client requires Candidate to possess to provide Representative Services; any expenses payable by or to Candidate; and any site regulations, IT access/security/usage policies, any other procedures or policies Client requires Candidate to adhere to and shall provide copies of any such policies/procedure to ERG.
- 4.5. Save where Client agrees that such resources shall be provided by Contractor, Client shall be responsible for providing office accommodation for Representative and any necessary resources and facilities and shall ensure that Representative works in a safe environment in accordance with a safe system of work, where applicable to the location. Client shall indemnify and keep indemnified ERG from and against all loss or liability suffered or incurred by ERG as a result of any claim by Contractor and/or Representative arising out of any injury or damage to his/her person or property.
- 4.6. ERG may replace Representative with another suitably qualified Representative with immediate effect at its absolute discretion.
- 4.7. Client shall advise ERG of any special health and safety matters about which ERG is required to inform Contractor/Representative and about any requirements imposed by law or by any professional body, which must be satisfied if Contractor/Representative is to fill the Assignment.
- 4.8. Where the AWR applies to the Assignment, Client warrants that it shall, from the start of the Assignment, provide the Agency Worker with -
  - a) information about relevant vacant posts with the End User; and
  - b) save where objectively justifiable, access to any and all collective facilities and amenities, in the same manner as if the Agency Worker were a direct worker or employee of the End User.
- 4.9. Upon request from ERG, Client undertakes to provide (without delay) to ERG accurate information about the working and employment conditions that are applicable to the End User's employees and direct workers, whether by contract or by collective agreement or otherwise and shall include subsequent variations thereto, including (without limitation) –
  - 4.9.1. the End User's standard terms and conditions that apply to their employees and those that apply to their workers;
  - 4.9.2. details relating to the application and calculation of, pay scales, bonuses, commission, overtime, shift allowance, unsocial hours allowance, hazardous duties, holiday pay, other related emoluments;
  - 4.9.3. entitlements relating to annual leave, night work, rest periods, rest breaks;
  - 4.9.4. benefits of monetary value including, without limitation, vouchers and stamps; and

- 4.9.5. any other information as may be required by ERG to comply with the AWR.
- 4.10. Where the AWR applies to the Assignment, Client agrees that it shall, upon request from ERG and without delay, provide accurate details relating to the working and employment conditions (as defined within regulation 5(2) and regulation 6 of the AWR) of the End User's workers and/or employees who undertake the same or broadly similar work as that of the Agency Worker during the Assignment.
- 4.11. Where the AWR applies to the Assignment and where applicable pursuant to information obtained under clauses 4.9 and 4.10 above, Client shall, and where applicable shall ensure that the End User shall, apply to the Agency Worker the same or similar process as applied to assess Pay that is directly attributable to the amount or quality of the work done. For the purposes of this clause "Pay" means as defined in regulation 6(2) of the AWR.
- 4.12. Where the AWR applies to the Assignment and the Agency Worker is pregnant, Client acknowledges and agrees that, following the Qualifying Period, Client shall, and where applicable shall procure that the End User shall, permit the Agency Worker time off to attend ante-natal medical appointments and ante-natal classes.
- 4.13. Where the AWR applies to the Assignment, Client acknowledges and agrees that, following the Qualifying Period and whereupon the Agency Worker is unable to continue to provide some or all of the agreed services on maternity grounds due to reasons of health and safety, Client shall, and where applicable shall procure that the End User shall, undertake to make such reasonable adjustments as are necessary to allow the Agency Worker to continue providing services for the duration of the Assignment. For the avoidance of doubt, such reasonable adjustments shall include provision of alternative work on terms no less favourable than those applicable to the Assignment.
- 4.14. Client undertakes and agrees to immediately notify ERG where an Agency Worker has worked for the End User in the same or similar role as the Assignment where, prior to the planned commencement of the Assignment, such role is within the Qualifying Period.
- 4.15. Client warrants and undertakes that it shall not, and where applicable shall procure that the End User shall not, seek to deny the Agency Worker's entitlement to rights under the AWR by virtue of the structure of assignments and shall at all times comply with regulation 9 of the AWR.

## **5. Client Undertakings**

- 5.1. Client shall not, and shall not seek to cause ERG to, unlawfully discriminate in relation to the services provided by ERG to Client in connection with these Terms and shall disclose any and all information requested by ERG in the event a Candidate makes a complaint to ERG.
- 5.2. Client undertakes to notify ERG immediately of its intention to:
- 5.2.1. Engage a Candidate Introduced by ERG; or
  - 5.2.2. Extend an Assignment of or otherwise Engage directly or indirectly a Candidate and/or Representative Introduced or supplied by; or
  - 5.2.3. Engage a Candidate and/or Representative on a permanent, contract or temporary basis or otherwise (including through another recruitment agency, employment business or limited company).
- 5.3. Client acknowledges and accepts that a fee is due to ERG in the foregoing events and Client further acknowledges clauses 6.18 and 8.8.



- 5.4. Client agrees and warrants that it shall not seek to obtain or to obtain (by whatever means including the use of social media) contact details of a Candidate Introduced to it by ERG, other than from ERG. Where appropriate, such details shall be provided by ERG upon written confirmation of Client's intent to Engage the Candidate.
- 5.5. Client will comply in all respects with all relevant statutes, by-laws and legal requirements including provision of adequate Public Liability insurance in respect of Representative where appropriate. Client shall allow and reasonably assist ERG in complying with its legal obligations regarding the introduction of Candidates and supply of Representatives in relation to the services hereunder.
- 5.6. Client warrants and undertakes that all information it provides to ERG under these Terms shall be true and accurate.
- 5.7. Client shall approve Timesheet within two working days verifying the number of hours/days worked by Representative during the applicable week of the Assignment.

## **6. Charges and Invoicing**

- 6.1. ERG shall charge Client and Client agrees to pay the Introduction Fee set out within the Fees Schedule in relation to any Candidate Engaged, by or on behalf of Client (whether directly or indirectly), following an Introduction in relation to clause 3 by or through ERG, within a period of 12 months from the date of the Introduction.
- 6.2. Introductions of Candidates are confidential. If Client discloses to a third party any details regarding a Candidate which results in an Engagement with that third party within 12 months from the date of the Introduction of Candidate, then Client agrees to pay ERG's Introduction Fee with no entitlement to any refund.
- 6.3. Where a Retained Fee payment structure has been agreed between ERG and Client, the introduction Fee is payable in stages (as set out within the Fees Schedule) and Client acknowledges and agrees that ERG shall render an invoice to Client at each stage. Where Remuneration has been estimated, ERG will adjust the final sum invoiced to take account of the actual Remuneration offered by Client to the Candidate.
- 6.4. Without prejudice to clauses 6.2, 6.9, 8 and 11.4, in the event Client subsequently withdraws, for whatever reason, an offer of employment (whether permanent or fixed-term) that has been made to Candidate, then Client agrees to pay ERG 50% of the fee.
- 6.5. Except in the circumstances set out in clauses 6.2, 6.3 and 6.4 no fee is incurred by Client until the Candidate commences an Engagement for the benefit of Client; whereupon ERG will render an invoice to Client.
- 6.6. Where the amount of the actual Remuneration of the Engaged Candidate is not known, ERG will charge a fee calculated in accordance with the Fees Schedule based on the maximum level of Remuneration applicable for the position in which the Candidate has been (or shall be) Engaged with regard to any information supplied to ERG by Client and/or comparable positions in the market generally.
- 6.7. Client agrees to pay ERG's charges for Contractor Services and for Representative Services as set out in the relevant Assignment Confirmation Schedule. Client shall pay all reasonable business expenses incurred by Representative in connection with the Assignment as may be agreed in writing with Client. Client acknowledges that ERG may raise invoices weekly in respect of this clause 6.7.
- 6.8. Client agrees to pay ERG's charges in the events set out within clause 8.
- 6.9. Costs incurred by ERG at Client's written request in respect of advertising or any other

additional cost, will be charged to Client in addition to any applicable fees, and such charges will be payable whether or not a Candidate is Engaged or commences Assignment.

- 6.10. Save as stated within clause 8.8, Client agrees to make payment to ERG on presentation of ERG's invoice or at least within the Payment Terms.
- 6.11. All invoices will be deemed to be accepted in full by Client unless Client notifies ERG in writing within five days of the amount Client disputes and the reason Client disputes that amount. In the event Client does so notify ERG that it wishes to dispute part of an invoice, Client shall pay the undisputed part of the invoice within the Payment Terms and shall co-operate fully with ERG in order to resolve the dispute as quickly as possible.
- 6.12. VAT shall be payable on charges/fees where applicable.
- 6.13. Client agrees that the terms and conditions contained within clauses 6.1, 6.2, 6.3, 6.4, 6.7, 6.8, 6.14, 6.15 and as set out within the Fees Schedule are fair and reasonable.
- 6.14. With reference to clause 4.12, where such time off to attend ante-natal medical appointments and ante-natal classes falls within the normal working periods of the Agency Worker under the Assignment, Client agrees to pay ERG's charges, in accordance with clause 6.7, for such periods whether by inclusion of such time on a timesheet or otherwise.
- 6.15. Client acknowledges and agrees that ERG may, upon notice, increase the fees referred to within clause 6.7 where necessary, such as (without limitation) to comply with the AWR.
- 6.16. Client acknowledges that it has no right to set-off, withhold or deduct monies from sums due to ERG under these Terms.
- 6.17. Without prejudice to clause 11.4, ERG reserves the right to charge interest on invoiced amounts overdue at the statutory rate as prescribed pursuant to Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (and as may be calculated using the calculator on the website: [www.payontime.co.uk](http://www.payontime.co.uk)) from the due date until the date payment is received in cleared funds and to charge compensation and further recovery costs in accordance with the Late Payment of Commercial Debts Regulations 2013.
- 6.18. Without prejudice to ERG's rights in this contract or in law, in the event Client fails to comply with:-
  - 6.18.1. clauses 3.4.1 and 3.4.2 and Engages a Candidate without making payment in full of ERG's invoice pursuant to clause 6.1; or
  - 6.18.2. clause 6.2 and fails to pay ERG's invoice for the Introduction Fee,
- 6.19. Any consent given by ERG pursuant to clause 6.18.2 shall be subject to Client paying to ERG a sum equivalent to 40% of the annual (or annualised where applicable) Remuneration paid (or due to be paid) by ERG to the relevant employee or officer or, if higher, 40% of the annual (or annualised where applicable) Remuneration that would be paid by Client to that employee or officer.

## **7. Rebates**

- 7.1. If Client qualifies for a rebate in accordance with clause 7.2, and if the Candidate's employment is terminated by Client or the Candidate within the time periods specified within the Rebate Table in the Fees Schedule, Client shall be entitled to a replacement Candidate or (at the absolute discretion of ERG) a rebate of a proportion of the Introduction Fee paid in accordance with the Rebate Table.
- 7.2. The following conditions must be met in order for the client to qualify for a rebate:



- 7.2.1. Client must notify ERG that the Candidate's employment has ended within 7 days of the date of termination or within 7 days of notice being given or received to terminate; whichever is earlier;
- 7.2.2. ERG's invoice/s for the introduction fee relating to the Candidate must have been settled in cleared funds within the Payment Terms;
- 7.2.3. the Candidate's employment is not terminated by reason of redundancy, re-organisation or change in strategy of Client;
- 7.2.4. the Candidate did not leave the employment as a result of the role being different to that of the role offered by Client prior to employment;
- 7.2.5. the Candidate did not leave the employment as a result of unlawful discrimination or other unlawful acts against the Candidate;
- 7.2.6. Client did not end the Candidate's employment in circumstances such that the Candidate would be likely to succeed in a claim of unfair dismissal (and, for the purposes of this sub-clause, the Candidate's length of service shall be treated as being at least two years); and
- 7.2.7. the Candidate was not at any time in the 12 months prior to the start date, employed or engaged (whether on a permanent or contract basis) by Client or any associated company of Client.
- 7.3. If at any time during a period of 12 months following the termination Client chooses to re-engage the Candidate, whether on a permanent or contract basis, any rebate paid to Client under clause 7.1 shall be immediately repayable to ERG.
- 7.4. No rebates or refunds will be paid by ERG in relation to Contractors, Representatives or Engagements pursuant to clause 6.2 or in relation to clause 8.
- 7.5. Where Retained Fees apply and subject always to clause 7.2, stage 1 and 2 payments are non-refundable and any rebate due shall be calculated in accordance with the Rebate Table in the Fees Schedule.

## **8. Re-engagement, Transfer, Migration of Contractors/Representatives**

- 8.1. If Client wishes to directly or indirectly Engage a Representative, they shall be entitled to do so provided that Client acts in accordance with one of the following provisions:
  - 8.1.1. Client notifies ERG forthwith in writing specifying the annual or annualised gross Remuneration that Client proposes to pay to (or for the services of) Representative and Client shall pay to ERG the Transfer Fee within the Payment Terms; or
  - 8.1.2. Subject to clause 8.5, Client serves a notice on ERG stating that Client wishes to engage Representative for the Extended Hire Period and then engages Representative (via ERG) in accordance with these Terms for the duration of the Extended Hire Period with effect from the earliest date (after such notice) on which the Assignment may be terminated by Client giving notice to ERG; or
  - 8.1.3. Client engages Representative following the end of Quarantine Period calculated from the date of termination (howsoever arising) of Representative's last Assignment (or where applicable, in accordance with regulation 10(5)6 of the Conduct Regulations), whereupon no further payment to ERG is required.
- 8.2. No refund of the Transfer Fee or of the fees paid during the Extended Hire Period will be paid by ERG in the event that the Engagement subsequently terminates (howsoever

arising).

- 8.3. Where ERG has Introduced a Candidate for the purposes of Assignment with Client which does not immediately result in Assignment with Client but which later leads to an Engagement of the Candidate by Client within 12 months from the date of Introduction, Client shall notify ERG of that Engagement and shall be liable to pay Transfer Fee to ERG; or, subject to clause 8.5, as an alternative to the Transfer Fee Client may elect to comply with the provisions of clause 8.1.2.
- 8.4. Whereupon the Extended Hire Period terminates, howsoever arising, prior to the completion of the entire period, Client agrees to pay Transfer Fee less any sums already paid under clause 8.1.2. For the avoidance of doubt, clause 8.1.1 or 8.1.2 shall apply in the event of any re-Engagement of Representative within the applicable Quarantine Period.
- 8.5. Clause 8.1.2 shall not apply and Client agrees to be liable for the Transfer Fee where (a) an Engagement of Representative is pursuant to clause 6.2; or (b) where the Conduct Regulations do not apply to Contractor/Representative whether pursuant to Regulations 32(9) or otherwise.
- 8.6. Where a notice in accordance with clause 8.1.2 is not received by ERG prior to Client's Engagement of Representative or within 5 days from notification of Client's intent to Engage Representative, Client hereby agrees to pay Transfer Fee and that it shall pay ERG's invoice within the Payment Terms.
- 8.7. Client acknowledges and agrees that where it fails to notify ERG of the actual Remuneration/fees it intends to pay the Candidate/Representative, ERG shall be entitled to base the calculation of the Transfer Fee on comparable market rates for similar roles.
- 8.8. Without prejudice to ERG's rights in this contract or in law, in the event Client fails to comply with clause 8.1 and Engages a Representative, Client acknowledges and agrees to pay a fee to ERG in the sum of £30,000.00 and shall make such payment within 7 days of the date of invoice issued by ERG in respect of this clause. For the avoidance of doubt, no rebates or refunds will be paid by ERG in relation to this clause 8.8.

## **9. Time Recording relating to Contractor Services**

- 9.1. Client shall approve Timesheet within two working days verifying the number of hours/days worked by Representative during the applicable week of the Assignment.
- 9.2. Approval of Timesheet by Client is confirmation of the number of hours/days worked by Representative and constitutes acceptance that Contractor Services and Representative Services have been provided in accordance with these Terms. Failure to approve the Timesheet does not waive Client's obligation to pay the charges in respect of the hours worked and/or services provided.
- 9.3. Notwithstanding clause 2.4, approval of the Timesheet by Client is deemed confirmation that Client has accepted these Terms.
- 9.4. If Client is unable to approve a Timesheet (or other agreed method of verification of hours/days) produced for authentication by Representative because Client disputes the amount of time claimed, then Client shall notify ERG within two working days from presentation of the claimed hours/days for verification and shall co-operate fully and in a timely fashion with ERG, including providing documentary evidence of the hours/days worked by Representative, to enable ERG to establish what periods of time, if any, Representative worked.
- 9.5. Client shall not be entitled to decline to approve a Timesheet on the basis that it is dissatisfied with the work performed by Representative. In cases of unsuitable work Client

should apply the provisions of clause 10.2 or 10.3 below.

## **10. Termination**

- 10.1. These Terms and Assignment may be terminated by either party by giving to the other immediate notice in the event that either ERG or Client goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a receiver or administrator appointed.
- 10.2. Client may terminate the Assignment by giving to ERG in writing the period of 28 days notice.
- 10.3. Notwithstanding the provisions of clause 10.2, Client may terminate the Assignment forthwith by notice in writing to ERG where;
  - 10.3.1. Representative is in wilful or persistent breach of its obligations; or
  - 10.3.2. Client reasonably believes that Representative has not observed any condition of confidentiality applicable to Representative from time to time; or
  - 10.3.3. Representative proves unsatisfactory to Client in the event of substantial non-performance of or serious misconduct by Representative, subject to supporting evidence.
  - 10.3.4. ERG may terminate the Assignment by giving to Client in writing the period of notice specified in the Assignment Confirmation Schedule.
- 10.4. Notwithstanding the provisions of clause 10.4, ERG may terminate an Assignment forthwith by notice in writing and without liability;
  - 10.4.1. if Client is in wilful or persistent breach of its obligations under these Terms; or
  - 10.4.2. if Client has a receiving order or administrative order made against it or is put into liquidation (save for the purposes of solvent reconstruction or amalgamation) or has a county court judgement entered against it; or
  - 10.4.3. If Client fails to make payment within the Payment Terms or where ERG has reasonable grounds to believe Client will not pay ERG's invoice within the Payment Terms; or
  - 10.4.4. where Contractor fails to serve to ERG any or adequate notice of termination and ceases (or intends to cease) to provide Representative Services to Client. ERG shall use reasonable endeavours to provide a suitable substitute contractor in such circumstances.
- 10.5. Client shall inform ERG in good time of any significant issues in relation to Representative or where Client is dissatisfied with any Representative in any respect.
- 10.6. When notice of termination of an Assignment is served by Client, payment for each week of notice shall be based on the specified hours/days agreed and set out within the relevant area of the Assignment Confirmation Schedule or actual hours worked by Representative, whichever the greater. Client agrees to make payment to ERG in accordance with clause 6 above irrespective of whether or not Representative continues to provide Representative Services to Client during this notice period.
- 10.7. In any event of termination of an Assignment pursuant to clause 10.3, ERG shall use reasonable endeavours to provide an alternative Contractor/Representative within fourteen days that in the reasonable opinion of ERG is suitable to perform the Representative

Services.

- 10.8. Notwithstanding clause 4.6, ERG may, at its absolute discretion and at any time, terminate the Assignment upon immediate notice where, in the opinion of ERG, Contractor and/or Representative is no longer suitable to provide services.
- 10.9. Following termination or expiry of these Terms or an Assignment, howsoever arising, shall be without prejudice to the rights or remedies of ERG under these Terms or at law and will not affect any accrued rights or liabilities of ERG prior to the date of termination.
- 10.10. Following termination or expiry of these Terms or of an Assignment, howsoever arising, the provisions contained within clauses 1, 2, 5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.8, 6.10, 6.11, 6.12, 6.16, 6.17, 7.3, 8, 11, 12, 13, 14, 15, 16, and 17 shall continue in full force and effect.

## **11. Liability and Indemnity**

- 11.1. Except as expressly provided in these Terms, and save as required by law, this clause 11 sets out the entire financial liability of ERG (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Client in respect of –
  - 11.1.1. any breach of these Terms;
  - 11.1.2. any use made by Client of the Services and/or Representative Services or any part of them; and
  - 11.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- 11.2. Except as expressly and specifically provided in these Terms –
  - 11.2.1. Client assumes sole responsibility for results obtained from the use of the Services and/or Representative Services by Client, and for conclusions drawn from such use;
  - 11.2.2. ERG shall have no liability for any damage caused by errors or omissions in any information, instructions or Client data provided to ERG or provided to Representative by Client in connection with the Representative Services, or for any actions taken by ERG or by Representative at Client's direction; and
  - 11.2.3. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms.
- 11.3. Save where required by law, ERG shall not be liable for-
  - 11.3.1. liable for failure to perform its obligations under these Terms if such failure results by reason of any cause beyond its reasonable control;
  - 11.3.2. any acts or omissions of Contractor or of Representative or any failure on the part of Contractor/Representative to render services or for any negligence (whether wilful or otherwise), dishonesty, fraud, misconduct or for lack of skill of Contractor/Representative or if Contractor terminates the Assignment for any reason;
  - 11.3.3. any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and
  - 11.3.4. any loss or destruction or damage to any media and/or Client Data and/or Client Property.

- 11.4. The Client shall indemnify and keep indemnified ERG against any costs, claims or liabilities incurred directly or indirectly by ERG arising out of or in connection with these Terms including (without limitation) as a result of–
- 11.4.1. any breach of these Terms by Client (including its employees, subcontractors and agents); and
- 11.4.2. any breach by Client, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity).
- 11.5. Save where stated otherwise, Contractor is engaged under contract for services and Representative is not the employees of ERG.
- 11.6. ERG shall not be liable for any indirect or consequential losses or damage including but not limited to; loss of profits, revenue, goodwill, anticipated savings or for claims by third parties arising out of ERG's performance or failure to perform any of its obligations in these Terms.
- 11.7. Nothing in these Terms excludes the liability of the Parties for death or personal injury caused by the other Party's negligence or for fraud or fraudulent misrepresentation.
- 11.8. Save as required by law, the sole aggregate liability of ERG to Client arising from or in connection with these Terms shall be limited to £10,000.

## **12. Confidentiality**

- 12.1. Except to the extent set out in this clause 12, or where disclosure is expressly permitted elsewhere these Terms, each Party shall treat the other Party's confidential information as confidential and not disclose the other Party's confidential information to any other person without the other Party's prior written consent.
- 12.2. Clause 12.1 shall not apply to the extent that –
- 12.2.1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure;
- 12.2.2. such information was obtained from a third party without obligation of confidentiality;
- 12.2.3. such information was already in the public domain at the time of disclosure otherwise than through a breach of these Terms;
- 12.2.4. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body; or 12.2.5 such information was independently developed without access to the other Party's confidential information.
- 12.3. Client procures that it shall not disclose (howsoever arising) to Contractor/Representative or any third party, any details relating to the fees agreed in relation to these Terms and shall take all necessary measures to prevent any such disclosure.
- 12.4. Client shall not without the prior written consent of a director of ERG provide any information in respect of a Candidate/Contractor/Representative to any third party whether for employment purposes or otherwise save where reasonably necessary for the purposes of effecting an Assignment.

## **13. Data Protection Act**

- 13.1. Each party shall comply with the means: (a) European Union Directives 95/46/EC and

2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the UK's Data Protection Act 1998; 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2013; (b) the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"); and (c) any applicable associated or supplementary data protection laws, regulations, codes of practice or guidance, as updated, amended or replaced from time to time; and the terms "Data Controller" and "Data Processor" will have the meanings given to them under the Act. To the extent that any data or information provided by one party to the other party contains personal data within the meaning of the Act or equivalent legislation, the party deemed to be the Data Processor will: (i) process such data and information only in accordance with the Data Controller's instructions; (ii) not transmit such data and information to a country or territory outside the European Economic Area without the Data Controller's prior written consent unless at least one of the permitted derogations set out in Principle 8 of the Act is complied with; and (iii) take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate.

- 13.2. The Client agrees that this contract forms a legitimate business interest for both parties and the Client shall not seek any claim with the Company/ Employment Business relating to the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR").
- 13.3. The Client acknowledges that for the purpose of the Data Protection legislation the Company is the Data Controller and the Client is a Data Controller (where Data Controller has the meanings as defined in the Data Protections Legislation. Where two or more controllers jointly determine the purposes and means of processing they shall be joint controllers. They shall determine their respective responsibilities – particularly regarding exercise of rights of the data subject and their respective duties to provide privacy notice information (Articles 13 and 14). The Data Subject can exercise their rights against either controller e.g. right to compensation and liability (article 82). Either controller can be held totally liable for entire damage to ensure effective compensation of the data subject but the controllers can claim back from each other that part of the compensation that was not their responsibility.

#### **14. Publicity**

- 14.1. There may be occasions when ERG would like to make known that it has provided services to Client in a particular market place. Client hereby consents to ERG publicising this by whatever means it deems appropriate. For the avoidance of doubt, ERG will not disclose any confidential information about Client's business or any particular transaction to any third party without Client's prior written consent save where required by law or to ERG's professional advisers.

#### **15. Non-Solicitation**

- 15.1. Client shall not, during the term of the Terms and for a period of 12 months after its expiry or termination (howsoever arising), without the prior written agreement of ERG –
- 15.1.1. employ or offer to employ, or enter into a contract for the services of any individual who was at any time during the Terms an officer or an employee of ERG, or entice, solicit or procure any such person to leave the employment of ERG (or attempt to do so) whether or not that person would commit any breach of contract in leaving such employment; or
- 15.1.2. procure or facilitate the making of any such offer or attempt by any other person.
- 15.2. Any consent given by ERG pursuant to clause 15.1 shall be subject to Client paying to ERG a sum equivalent to 40% of the annual (or annualised where applicable) Remuneration paid (or due to be paid) by ERG to the relevant employee or officer or, if higher, 40% of the annual (or annualised where applicable) Remuneration that would be paid by Client to that



employee or officer.

## **16. General**

- 16.1. These Terms shall be construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.
- 16.2. If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of these Terms shall remain in full force and effect to the extent permitted by law.
- 16.3. Any failure by ERG to enforce at any particular time any one or more of these Terms shall not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.
- 16.4. Client shall not assign these Terms without the prior written consent of ERG. For the avoidance of doubt, this restriction shall include any assignment to any subsidiary, associated company or member of Client's group.
- 16.5. No provision of these Terms shall be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 ("the Act"). This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act.
- 16.6. The parties acknowledge that the Conduct Regulations may not necessarily apply to these Terms nor does Representative works or shall work under the control of Client/End User.
- 16.7. The parties acknowledge that the AWR may not necessarily apply to these Terms nor does Representative works or shall work for and under the supervision and direction of Client/End User.

## **17. Notices**

- 17.1. Any notice required to be given under these Terms (including the delivery of any Timesheet or invoice) shall be delivered by hand, sent by e-mail or prepaid first-class post to the recipient at its address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purposes of these Terms).
- 17.2. Notices in connection with these Terms shall be deemed to have been given and served,
  - 17.2.1. if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10:00am on the next business day after the day of delivery;
  - 17.2.2. if sent by e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the authorised recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or
  - 17.2.3. if sent by prepaid first-class post, 48 hours from the time of posting.
- 17.3. For the avoidance of doubt and for the purpose of this clause 17.2, a "business day" shall mean any day excluding Saturday, Sunday and public holidays.

## **SCHEDULE 1**

### **Fees Payable**

For the avoidance of doubt, a fee will be due to ERG from Client in the event any Candidate introduced by ERG is engaged or employed by Client (or where engaged/employed by a third party for the benefit of Client) and in the event Client introduces a Candidate to a third party who subsequently employs or engages that Candidate.

## SCHEDULE 2

### Fees relating to Permanent/Fixed-Term

#### Introduction Fees

The following table sets out the fee payable by Client where a Candidate was Introduced by ERG for the purposes of fixed-term or permanent employment by Client. The fee shall be calculated as a percentage (as set out in the table below) of the Candidate's Remuneration applicable during the first 12 months of the Engagement.

INTRODUCTION FEE	
Candidate's Remuneration	Percentage payable as the Fee
£0 to £29,999	20%
£30,000 to £49,999	27%
£50,000 to £79,999	30%
£80,000 and above	35%

If the employment is for a fixed term of less than 12 months, the applicable fee (as calculated in above table) will apply pro-rata subject to a minimum fee of £3,000.00 (three thousand pounds sterling). If the employment is extended beyond the initial fixed term or if Client re-engages the Candidate within 12 months from the date of the first day of employment, Client shall pay a further fee based on the Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or until the Candidate has been Engaged for a total of one year; whichever is less.

#### Retained Fees

The following table sets out the percentage of the Introduction Fee payable and the point during the recruitment process that the stated portion of the Introduction Fee becomes due. The table below applies per vacancy and for the avoidance of doubt, this includes where the same skill set is required for each vacancy.

Stage	Amount	Payment Point
1	1/3 of Introduction Fee	Upon ERG's agreement to source a Candidate for Client.
2	1/3 of Introduction Fee	Upon ERG's submission of Candidate/s to Client.
3	1/3 of Introduction Fee	Upon Candidate's acceptance of Client's offer of Engagement.

#### Rebate terms relating to Permanent/Fixed-Term

Rebates only apply to Candidates Introduced for the purpose of employment by Client on a permanent or fixed-term basis and are subject to the conditions set out in clause 7. Rebates do not apply to Contractor Services or Representative Services.

REBATE TABLE	
Duration of Employment by Client	Percentage of Introduction Fee to be rebated
0 to 2 weeks	100%
3 to 4 weeks	50%
5 to 6 weeks	25%
Over 6 weeks	0%
Please note that stage 1 and 2 Retained Fee payments are non-refundable and therefore shall be excluded from the Introduction Fee used to determine rebate due in this table.	