

**TERMS OF BUSINESS  
FOR  
THE INTRODUCTION OF  
PERMANENT OR FIXED TERM STAFF**

## 1. DEFINITIONS

1.1. In these Terms the following definitions apply:

- “Agency”** Shirley Parsons Limited (registered company no. 05600243) of Fourth Floor, Blue Leanie, Walton Street, Aylesbury, HP21 7QW (“**the Agency**”).
- “Cancellation Fee”** means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.9;
- “Candidate”** means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency’s own staff;
- “Client”** means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is Introduced;
- “Confidential Information”** means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) in respect of the Company, the Client and its end clients, relating to their business methods, plans, systems, finances or projects, training and development and research or development projects, their trade secrets, the identity and business affairs of their customers and clients, potential customers and clients, the provision of products or services to which they attach confidentiality or in respect of which they hold an obligation to a third party which comes to either parties attention or possession and which is regarded or could reasonably be regarded as confidential, whether or not any such tangible information is marked ‘confidential’;
- “Data Protection Laws”** means up to but excluding 25 May 2018 the **Data Protection Act 1998 and thereafter** (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;
- “Engagement”** means the engagement (including the Candidate’s acceptance of the Client’s offer), employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a

permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

- “Introduction”** means (i) the passing to the Client of a curriculum vitæ or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;
- “Introduction Fee”** means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;
- “Losses”** means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;
- “Remuneration”** includes gross base salary or fees, commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party. Where the Client provides a company car, a notional amount of £5,000 will be added to the salary in order to calculate the Agency’s fee;
- “Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.

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

## 2. THE CONTRACT

- 2.1. These terms of business and any attached Schedule(s) (**“the Terms”**) constitute the contract between the Agency and the Client for the Introduction of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

### 3. NOTIFICATION AND FEES

- 3.1. The Client agrees to:
  - 3.1.1. notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
  - 3.1.2. notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and
  - 3.1.3. pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.2.
- 3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).
  - 3.2.1. The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement.
- 3.3. The Introduction Fee is the amount equal to 25% of the Remuneration applicable during the first 12 months of the Engagement.
- 3.4. Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.
- 3.5. Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6

calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.

- 3.6. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 3.7. VAT is charged at the standard rate on all fees.
- 3.8. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 3.9. If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it, other than in the case of unsuitable references, the Client shall be liable to pay the Agency a Cancellation Fee of £2,000 for salaries under £40,000, and £3,000 for salaries over £40,000.
- 3.10. In the event that any Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Agency, or within 3 months of leaving the Agency, the Client shall be liable to pay the Agency a fee equivalent to the Introduction Fee calculated in accordance with clause 3.3. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 3.10 in any circumstances.

#### 4. REFUNDS

- 4.1. If the Engagement is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 12 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2, a partial refund of the Introduction Fee shall be paid to the Client in accordance with the scale set out below:

<b>Week in which Candidate leaves</b>	<b>% of introduction fee refunded:</b>
1-2	90%
3-4	80%
5-6	60%
7-8	40%
9-10	20%
11-12	10%

If the Candidate is made redundant, no refund will be made. There will be no refund where the Candidate leaves during or after the 13<sup>th</sup> week of the Engagement.

- 4.2. In order to qualify for the refund set out in clause 4.1 the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of

the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement.

- 4.3. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 4.4. In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.
- 4.5. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 6 calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

## 5. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a **"Third Party Introduction"**. If that Third Party Introduction results in an Engagement of the Candidate by the third party within 6 months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee calculated in accordance with clauses 3.3 and 3.4. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

## 6. SUITABILITY CHECKS

- 6.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
  - 6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
  - 6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
  - 6.1.3. confirm that the Candidate is willing to work in the position; and
  - 6.1.4. obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body.
- 6.2. Notwithstanding clause 6.1 the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
  - 6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;

- 6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 6.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 6.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3. To enable the Agency to comply with its obligations under clause 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
- 6.3.1. the type of work that the Candidate would be required to do;
  - 6.3.2. the location and hours of work;
  - 6.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
  - 6.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 6.3.5. the date the Client requires the Candidate to commence the Engagement;
  - 6.3.6. the duration or likely duration of the Engagement;
  - 6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
  - 6.3.8. the intervals of payment of Remuneration; and
  - 6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 6.4. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:
- 6.4.1. obtain confirmation of the Candidate's identity;
  - 6.4.2. obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and
  - 6.4.3. obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

## 7. CONFIDENTIALITY AND DATA PROTECTION

- 7.1. Both parties will use reasonable endeavours to ensure that they will keep confidential (and take reasonable steps to procure that their employees, subcontractors, agents, suppliers and other relevant third parties will keep confidential) and will not at any time for any reason disclose, publish or permit to be disclosed to any person, or published, or otherwise make use of, or permit to be made use of, any Confidential Information.
- 7.2. Both parties will comply with the provisions of the Data Protection Laws. For the purposes of this Clause, Data Controller, Data Processor, Joint Controller and Personal Data shall have the meanings as defined in the Data Protection Laws.
- 7.3. Under this Agreement the Company is a Data Controller and the Client is a Data Controller. The parties are not Joint Controllers or Data Processors for the other or a third party unless specific terms are agreed to that effect.
- 7.4. The Client shall only process Candidates' Personal Data for the agreed purposes for which the Personal Data is transferred unless it notifies the Company before undertaking any further processing.
- 7.5. The parties shall ensure that;
  - 7.5.1. they have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
  - 7.5.2. they provide reasonable assistance to the other in responding to any request from a Data Subject and in ensuring compliance with their respective obligations under the Data Protection Laws with respect to data subject access requests and other data subject rights, data security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
  - 7.5.3. they notify the other without undue delay on becoming aware of a Personal Data breach relevant to Personal Data transferred pursuant to this Agreement.

## 8. LIABILITY

- 8.1. The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.



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

## 9. NOTICES

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

## 10. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

## 11. GOVERNING LAW AND JURISDICTION

These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.