

It is important that you note both sets of terms and conditions are separate and independent of the other.

Client Terms for the Introduction of Permanent Staff to be directly employed by the Client
(page 1 to 5 of this document)

These conditions apply to the introduction to you by Shift F5 Limited of an Applicant to be employed directly by you.

Client Terms of Business for the Introduction of Contract Staff (page 6 to 14 of this document)

These conditions apply to the introduction to you by Shift F5 Limited of a service provider where there is to be no direct contractual link between you and the service provider

**CLIENT TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF TO BE DIRECTLY EMPLOYED
BY THE CLIENT**

1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply:

“Applicant”	means (i) a person whose details (being a curriculum vitae and/or other identifying information) are provided to the Client directly or indirectly by the Employment Agency, including any officer or employee or agent of the Applicant if the Applicant is a limited company and/or (ii) members of the Employment Agency’s own staff;
“Client”	means the person; firm or corporate body together with any associate of that person, firm or corporate body as defined by section 1152 of the Companies Act 2006 to which the Applicant is introduced;
“Employment Agency”	means Shift F5 Limited, a company incorporated in England under number 11316175 and whose registered office is at 3 Mellor Road, Cheadle Hulme, Cheshire, SK8 5AT;
“Engagement”	means the engagement, employment or use of the Applicant, by the Client (or by any third party to whom the Client has Introduced an Applicant), 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, directly or through a limited company of which the Applicant is an officer or employee and in any case whether paid or unpaid. “Engaged” shall be construed accordingly;
“Introduction”	means (i) the Client’s interview of an Applicant in person or by telephone following the Client’s instruction to the Employment Agency to search for an Applicant where the Applicant is subsequently Engaged (whether or not the Employment Agency is the effective cause of the Engagement) and/or (ii) the provision to the Client, directly or indirectly, of a curriculum vitae and/or information which identifies the Applicant where the Applicant is subsequently Engaged (whether or not the Employment Agency is the effective cause of the Engagement) and/or (iii) the provision by

the Client to a third party, directly or indirectly, of a curriculum vitae and/or information which identifies the Applicant where the Applicant is subsequently Engaged (whether or not the Client is the effective cause of the Engagement). “Introduced” shall be construed accordingly;

“Party”

means the Client and/or the Employment Agency, as the case may be, and “Parties” shall be construed accordingly.

“Relevant Period”

means the period of 12 months from the latest to occur of: (i) the Client’s interview of an Applicant in person or by telephone, following the Client’s instruction to the Employment Agency to search for an applicant; (ii) the passing to the Client, directly or indirectly, of a curriculum vitae or information which identifies the Applicant; (iii) the last discussion between the Employment Agency and the Client relating to the Applicant; and (iv) the rejection by the Client of the Applicant;

“Remuneration”

includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Applicant for services rendered to or on behalf of the Client or any third party. Company cars provided to candidates introduced by the Employment Agency will be assessed as Remuneration at the rate of £4,000 exc. VAT.

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

2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Agency and the Client for the supply of 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 an Applicant, or the passing by the Client of any information about the Applicant to any third party following an Introduction.
- 2.2. These terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Agency, these Terms of Business prevail over any other terms of business or purchase conditions put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment 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.

3. NOTIFICATION AND FEES

- 3.1. The Client agrees:
 - a) To notify the Employment Agency immediately of any offer of an Engagement which it makes to the Applicant;
 - b) To notify the Employment Agency immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the Remuneration to the Employment Agency; and

c) To pay the Employment Agency's fee within 7 days of the date of invoice.

3.2. No fee is incurred by the Client until the Applicant commences the Engagement.

3.3 The Employment Agency reserves the right to charge interest on invoiced amounts unpaid for more than 7 days at the rate of 1.5% per calendar month or part thereof on overdue payments.

3.4 An Introduction fee calculated in accordance with clause 3.5 or 3.7 will be charged and payable in relation to any Applicant Engaged within the Relevant Period subsequent to an Introduction by or through the Employment Agency (whether directly or indirectly and whether or not the Employment Agency is the effective cause of the Engagement). For the avoidance of doubt, (and without limitation), the use by the Client of any social media or other internet or web-based technologies for the purposes of recruiting or satisfying itself as to the suitability of Applicants shall not affect the Client's obligation to pay the introduction fee where there has been an Introduction of the Applicant by the Employment Agency.

3.5 a) The fee payable to the Employment Agency by the Client in the event of an Engagement within the Relevant Period is calculated in accordance with the below Fee Structure on the Remuneration applicable during the first 12 months of the Engagement. VAT will be charged on the fee at the then current rate. The fee is based on the Applicant's full annual Remuneration and is payable regardless of the length of the Engagement. If the Engagement is for less than 12 months, the fee shall be calculated by ascertaining what the yearly Remuneration would have been had the Engagement been for 12 months by dividing the amount to be paid by the number of days to be worked and then multiplying by 260. Where the Engagement is on a part time basis, the fee will be calculated on the basis of a full time position working 37.5 hours per week.

Applicant's yearly Remuneration on appointment	Employment Agency's fee exc. VAT
£0 to £19,999.99	20% annual Remuneration
£20,000 to £24,999.99	22.5% annual Remuneration
£25,000 to £29,999	25% annual Remuneration
£30,000 and above	30% annual Remuneration

b) In all cases there shall be a minimum fee of £4,000. VAT will be charged on the fee at the then current rate.

c) If, after an offer of Engagement has been accepted by an Applicant, the Client withdraws the offer, the Client will be liable to pay the Employment Agency a cancellation fee of £2,000 + VAT.

3.6 If the Client subsequently Engages or re-Engages the Applicant within the period of 12 calendar months from the date of termination of the Engagement or withdrawal of the offer, a full fee calculated in accordance with clause 3.5 above becomes payable.

3.7 Where the actual Remuneration is not known, the Client shall pay the Employment Agency a sum equal to three times the fee, calculated in accordance with clause 3.5 regardless of any special terms agreed, based upon the salary specification provided by the Client and, in the absence of which, the prevailing market rate for that position.

3.8 Any special terms agreed, e.g. discounted rates, are subject to the Employment Agency receiving written notification prior to the commencement of the Engagement of an Applicant by the Client and the invoice being paid within the 7 days stated. Otherwise fees will be subsequently charged as per clause 3.5 regardless of any special terms agreed.

4. **REBATES**

- 4.1 In order to qualify for the following rebate, the Client must pay the Employment Agency's fee within 7 days of the date of invoice and must notify the Employment Agency in writing of the termination of the Engagement within 7 days of its termination.
If the Engagement terminates before the expiry of 8 weeks (except where the Applicant is made redundant) from the commencement of the Engagement or (if the Engagement commences on a day other than a Monday) the immediate preceding Monday; then provided the Client notifies the Employment Agency in writing within 7 days of such termination and the account has been settled in full in accordance with clauses 3.1 (c) and 3.5, the Employment Agency shall pay the Client a rebate calculated at 12.5% of the fee charged by the Employment Agency for each remaining calendar week the candidate was not Engaged during the 8 week period.
- 4.2 In circumstances where clause 3.6 applies the full fee stated in clause 3.5 is payable and there shall be no entitlement to a rebate.

5. INTRODUCTIONS

- 5.1. Introductions of Applicants are confidential. Where a third party Engages an Applicant within the Relevant Period after a direct or indirect disclosure by the Client to that third party of any details regarding an Applicant Introduced by the Employment Agency (whether or not the disclosure is the effective cause of the Engagement) the Client is liable to payment of the Employment Agency's fee as set out in clause 3.5 or 3.7 with no entitlement to any rebate.
- 5.2. In the event that any employee of the Employment Agency with whom the Client has had personal dealings accepts an Engagement with the Client within 6 months of leaving the Employment Agency's employment, the Client shall be liable to pay an introduction fee to the Employment Agency in accordance with clause 3.5.

6. SUITABILITY AND REFERENCES

- 6.1. The Employment Agency endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant 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 that the Applicant is willing to work in the position which the Client seeks to fill.
- 6.2. At the same time as proposing an Applicant to the Client the Employment Agency shall inform the Client of such matters in clause 6.1 as they have obtained confirmation of. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following save where the Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the Client.
- 6.3. The Employment Agency endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 6.4. The Employment Agency endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.
- 6.5. Notwithstanding clauses 6.1, 6.2, 6.3 and 6.4 above the Client shall satisfy itself as to the suitability of the Applicant and the Client shall take up any references provided by the Applicant to it or the Employment Agency before engaging such Applicant. The 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 Applicant, and satisfying any medical

and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.

- 6.6. To enable the Employment Agency to comply with its obligations under clauses 6.1, 6.2, 6.3 and 6.4 above the Client undertakes to provide to the Employment Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Applicant 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 Applicant would be entitled to give and receive to terminate the employment with the Client.

7. SPECIAL SITUATIONS

- 7.1. Where the Applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Employment Agency will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If the Employment Agency is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

8. LIABILITY

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

9. GENERAL

- 9.1(a) If any provision or part-provision of these Terms of Business is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void, invalid or unenforceable and it shall be binding in that changed or reduced form.
- 9.1(b) If such modification under Clause 9.1a) is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 9.1 shall not affect the validity and enforceability of the rest of these Terms of Business.

10. DATA PROTECTION

- 10.1. Each Party shall, when processing Personal Data under or in connection with these Terms, at all times comply with all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to: the Data Protection Act 2018; UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended (together "Applicable Data Protection

Laws”). For the purposes of this clause 10, the expressions “personal data”, “data controller”, “data processor” and “data subject” shall have the meaning defined in Applicable Data Protection Laws.

- 10.2. Each Party acknowledge that it will need to share certain Personal Data relating to its own employees and personnel and candidates (“Shared Personal Data”) in order for the Parties to perform obligations and exercise rights under these Terms (“Agreed Purposes”). The Parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause (“Agreed Purposes”). The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.
- 10.3. The Parties acknowledge and agree that each Party acts as a data controller in its own right with respect to its processing of Personal Data in connection with the provision and receipt of services under these Terms. Each Party, as data controller, may disclose Personal Data to the other Party, as data controller, under these Terms, on the terms of this clause 10.
- 10.4. Each Party is, as data controller, responsible (i) for providing all necessary notices to individuals and data subjects included within Shared Personal Data, including where applicable its employees, officers and representatives and Candidates to the extent that their Personal Data is required to be disclosed to, or processed by, the other Party in connection with these Terms; and (ii) for ensuring that in respect of such Personal Data, it has a valid processing ground under Applicable Data Protection Laws to share their personal data with the other Party.
- 10.5. The privacy policy of the Employment Agency can be found at <https://www.shiftf5.co.uk/privacy-policy/>.
- 10.6. Each Party warrants and undertakes that it has in place and will maintain appropriate operational and technological processes and procedures to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of Personal Data.
- 10.7. The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with requests from data subjects (within Shared Personal Data shared with the other Party) to exercise their rights under the Applicable Data Protection Laws.
- 10.8. Each Party shall not retain or process Shared Personal Data received from the other Party for longer than is necessary to carry out the Agreed Purposes. Notwithstanding the foregoing, each Party shall continue to retain Shared Personal Data in accordance with and required by any applicable statutory or professional retention periods.

11. LAW

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

CLIENT TERMS OF BUSINESS FOR THE INTRODUCTION OF CONTRACT STAFF

1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply:-

- “Project”** means the Services to be performed by the Service Provider Personnel for the Client for a period of time during which the Service Provider is supplied by the Employment Business to provide the Services to the Client;
- “Services”** means the services which the Client has instructed the Employment Business to supply a service provider to provide, as specified in the Schedule;
- “Client”** means the person, firm or corporate body detailed in the Schedule, together with any associate of that person, firm or corporate body as defined by section 1152 of the Companies Act 2006, requiring the services of the Service Provider;
- “Conduct Regulations”** means the Conduct of Employment Agencies and Employment Business Regulations 2003;
- “Employment Business”** means Shift F5 Limited, a company incorporated in England under number 11316175 and whose registered office is at 3 Mellor Road, Cheadle Hulme, Cheshire, SK8 5AT;
- “Service Provider”** means the limited company* Introduced to the Client by the Employment Business to carry out a Project (and save where otherwise indicated, includes any Service Provider Personnel and any third party to whom the provision of the Services is assigned or sublet with the prior approval of the Client);
***Note: this can include composite companies**
- “Service Provider Personnel”** means any officer, employee or representative of the Service Provider Introduced or supplied by the Employment Business to the Client to provide the Services;
- “Engagement”** means any employment or use of the Service Provider’s services or the services of any Service Provider Personnel by the Client (or by any third party to whom the Client has Introduced the same), whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement or any other engagement, or through another employment business, and in any case whether paid or unpaid, including (without limitation) for any follow up work arising out of or relating to the Project. “Engaged” shall be construed accordingly;
- “Introduction”** means (i) the Client’s interview of an officer, employee or representative of the Service Provider, in person or by telephone, following the Client’s instruction to the Employment Business to supply a service provider where the same is subsequently Engaged (whether or not the Employment Business is the effective cause of the Engagement) and/or (ii) the provision to the Client, directly or indirectly, of information which identifies the Service Provider or the Service Provider Personnel where the same is subsequently Engaged (whether or not the Employment Business is the effective cause of the Engagement) and/or (iii) the provision by the Client to a third party, directly or indirectly, of information identifying the Service Provider or Service Provider Personnel where the same is subsequently Engaged (whether or not the Client is the effective cause of the Engagement). “Introduced” shall be construed accordingly;
- “Relevant Period”** means the period of 12 months from the latest to occur of: (i) the Client’s interview of an officer, employee, or representative of the Service Provider, in

person or by telephone, following the Client's instruction to the Employment Business to supply a service provider; (ii) the passing to the Client, directly or indirectly, of information which identifies the Service Provider or the Service Provider Personnel; (iii) the last discussion between the Employment Business and the Client relating to the Service Provider Personnel; and (iv) the rejection by the Client of the Service Provider Personnel;

"Schedule" means the written confirmation referred to in Clause 3.1 below.

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

2. THE CONTRACT

- 2.1. These Terms, together with any applicable Schedule, constitute the contract between the Employment Business and the Client for the supply of Services by the Employment Business to the Client ("**Contract**") and these Terms are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of a Service Provider or any Service Provider Personnel or the passing of information about the Service Provider or any Service Provider Personnel to any third party following an Introduction.
- 2.2. Unless otherwise agreed in writing by a Director of the Employment Business, these Terms prevail over any terms of business or purchase conditions proffered by the Client.
- 2.3. No variation or alteration of these Terms shall be valid unless approved by an authorised representative of the Employment Business in writing. The details of any variation to the Terms shall be notified to the Client in writing by the Employment Business as soon as reasonably practicable and such document shall confirm the date upon which the varied terms are to take effect.

3. CONFIRMATION OF PROJECTS

- 3.1. Prior to the commencement of the Project, or if this is not practical, upon commencement of the Project, the Employment Business will send to the Client written confirmation of the Project specifying the duration of the Project, the identity of the Service Provider, the fee payable to the Employment Business together with such disbursements as may have been agreed, notice period to terminate the Contract, the intervals at which invoices shall be rendered to the Client by the Employment Business and any other relevant information ("the Schedule").
- 3.2. The Client acknowledges that, unless otherwise agreed in writing, the Service Provider and Service Provider Personnel carrying out the Project have given notice to Opt Out pursuant to Regulation 32 of the Conduct Regulations and further that any person to whom the performance of the Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Regulations applies to the Project.

4. PERFORMANCE OF SERVICES

- 4.1. The Employment Business shall provide the Service Provider to the Client to complete the Project, subject to these Terms. The Service Provider is engaged by the Employment Business under a contract for services. The Services of the Service Provider shall be provided to the Client for the period of the Project (as set out in the Schedule).
- 4.2. It is the Client's responsibility to specify its requirements in time frames and provide all information to the Service Provider and to liaise with the Service Provider to ensure the Service Provider is providing the Services as detailed within the Schedule and to the Client's satisfaction. Such service reviews should be conducted prior to authorising worksheets, which will commit the Client to settle the Employment Business's invoices relating to such worksheets. The Client shall, at its own expense, provide the Service Provider with all documents or other

materials and data or other information necessary for the completion of the Project. The Service Provider shall use its own equipment where appropriate.

- 4.3. The Client is to liaise with the Service Provider about the Service Provider place of work and the material to be utilised for the completion of the Project. The Client shall ensure the Service Provider Personnel are accorded sufficient access to any of the Client's premises, information, data or personnel and use of any equipment, which is reasonably necessary for the completion of the Project. While the Service Provider is working at the Client's premises it must be provided with a suitable place of work and such materials in a good condition and sufficient for the purpose for which they are required and the Client should ensure that Service Provider Personnel abide by the rules and regulations of the Client's site.
- 4.4. Whilst the Service Provider Personnel are working at the Client's premises the Client shall ensure that the statutory health and safety standards are observed in relation to the Service Provider Personnel.
- 4.5. The Employment Business shall use its reasonable endeavours to ensure that the Service Provider is suitable to carry out the Services with reasonable skill and care and in this regard has made reasonable enquiries of the Service Provider concerning suitability and technical competence. The Employment Business does not test the Service Provider's technical skills and it is for the Client to satisfy itself as to the Service Provider's overall capability to complete the Project when meeting the Service Provider and/or during the first week of the commencement of the Project.
- 4.6. The Client should notify any complaints concerning the Service Provider's performance promptly to the Employment Business.

5. CHARGES

- 5.1 The Client agrees to pay the charges of the Employment Business as notified at the commencement of the Project and which may be varied from time to time during the Project. The charges are comprised mainly of the Service Provider's fees but also include the Employment Business's fees, and any travel, hotel or other disbursements as may have been agreed in writing with the Client. VAT is payable on the entirety of these charges.
- 5.2 The charges will be invoiced to the Client on a weekly basis and are payable within 7 days, unless otherwise specified in the Schedule. The Employment Business reserves the right to charge interest on invoiced amounts unpaid for more than 7 days at the rate of 1.5% per calendar month or part thereof on overdue payments.
- 5.3 The Employment Business reserves the right to withdraw the Services of the Service Provider if payment of its invoices are not made within the 7 day period as set out above or within such other time as may be specified in the Schedule.
- 5.4 Upon the expiry or the termination of the Contract, for whatever reason, payment of any outstanding invoices will become payable with immediate effect.

6. CLIENT'S OBLIGATIONS

- 6.1 Where the Client instructs the Employment Business to retain a Service Provider, the Employment Business will do so and there will be no direct contractual link between the Client and the Service Provider.
- 6.2 Throughout the Project, the Client will provide the Service Provider with sufficient instructions and facilities or access to facilities and equipment and will provide all other reasonable assistance to enable the Service Provider and the Service Provider Personnel to adequately perform their obligations under the Project.
- 6.3 Where a Service Provider has been retained by the Employment Business and deployed with the Client, the Client shall:

- 6.3.1 be responsible for monitoring the Service Provider's performance of the Project and for reporting any shortcomings to the Employment Business;
 - 6.3.2 agree and sign weekly worksheets provided by the Service Provider as a record of the work done by the Service Provider and the Client's acceptance of that work;
 - 6.3.3 promptly pay each invoice submitted by the Employment Business which is based on the agreed worksheets and calculated according to the Project;
 - 6.3.4 be responsible for arranging, maintaining at all times and paying when due the relevant premiums so that the Client has adequate and valid insurance cover for the duration of the Contract for any injuries and loss of or damage to property suffered by the Service Provider and Service Provider Personnel, and for any claims by the Client's clients resulting from acts or omissions of the Service Provider or Service Provider Personnel, in the course of providing the Services.
- 6.4 The Client shall ensure that the Client and the Client's staff and premises comply with all relevant legislation or Regulations, Statutory Instruments, orders or Rule of Law relating to health and safety and related matters and shall ensure that the Service Provider and Service Provider Personnel are provided with a safe working environment. In this context, the Client shall ensure that the Service Provider is not prevented from complying with any relevant legislation or regulation.
- 6.5 The Client accepts that the Service Provider Personnel may have other commitments while performing the agreed Project and provided that:
- 6.5.1 the Service Provider gives the Client reasonable notice; and
 - 6.5.2 the absence of the Service Provider Personnel does not interfere with the performance of the Project or with any timetable set out in the Project or as agreed between the Client and the Service Provider; or
 - 6.5.3 the Service Provider offers a satisfactory substitute in accordance with Clause 6.6 below, who will continue with the Project during the Service Provider's absence, then the Client will not report the Service Provider's action to the Employment Business or require the Employment Business to take action under Clause 7 below.
- 6.6 The Client acknowledges that the Service Provider has the right to supply one or more substitutes of equivalent expertise to work in place of the original personnel. The Client has the right to refuse to accept the substitute personnel if, in the view of the Client (acting reasonably), the substitute personnel have insufficient qualifications or experience. Where substitution occurs, the other terms and conditions of the Contract, and in particular (but not limited to) the agreed sum and the timetable of the Project, will remain unchanged, unless otherwise agreed by both parties in writing.
- 6.7 In the event that the Service Provider cannot provide either the original personnel or acceptable substitute personnel, the Client is entitled (subject to the terms set out in the schedule) to terminate the Project upon 7 days written notice.
- 6.8 The Client shall not take on any direct control over or responsibility for the Service Provider Personnel. In particular, the Client acknowledges that the Service Provider Personnel are professionals who will use their own initiative as to the manner in which the Services are delivered and will not be subject to, or to the right of, supervision, direction or control as to the manner in which they render those Services.

7. VERIFICATION OF EXECUTION OF THE SERVICES

- 7.1 At the end of each week of the Project (or at the end of the Project where the Project is for a period of less than one week or is completed or finished before the end of a week) the Client shall verify the execution of the Services provided by the Service Provider by signature of a worksheet provided to the Service Provider for this purpose. The Employment Business shall retain one copy of the worksheet to keep for its own record.

- 7.2 Verification of the execution of the Services by the Client constitutes acceptance that the Service Provider's services have been provided satisfactorily and in accordance with the Contract. Failure to verify execution in writing does not affect the Client's obligation to pay the charges in respect of the work done.

8. REMUNERATION

- 8.1 The Employment Business is responsible for paying the Service Provider's fees and for deducting any sums as may be required by law and under no circumstances should the Client make payment to the Service Provider directly for work completed as set out in the signed worksheets.
- 8.2 Where the Client is a public authority as defined in The Freedom of Information Act 2000 or (as applicable) The Freedom of Information (Scotland) Act 2002, the Client shall: (a) prior to commencement of the Project, notify the Employment Business whether the engagement of the Service Provider for the Project will be within or outside IR35 and provide in writing the reasons for the Client's decision; and (b) as soon as possible and in any event within 31 days following written request from the Employment Business, provide in writing any additional information required by the Employment Business in relation to the Client's decision making process in connection with the notification and information provided pursuant to (a).
- 8.3 Where the Client fails to notify the Employment Business or to provide information in accordance with Clause 8.2 or the Client notifies the Employment Business that the engagement is outside IR35 but such assessment is disputed by HMRC, the Client shall indemnify the Employment Business against any costs, claims, damages, expenses, taxes, statutory contributions and penalties suffered or incurred by the Employment Business as a result of any failure to make any deductions required by law from the amounts paid to the Service Provider in respect of that Project.
- 8.4 The Client and the Employment Business agree that any authorised expenses incurred by the Service Provider or Service Provider Personnel pursuant to carrying out the Services, including without limitation, accommodation charges, meals and telephone services, travel expenses are chargeable by the Employment Business to the Client upon receipt of an authorised claim form and supporting documentation and are subject to a 5% administration fee to be charged by the Employment Business to the Client.

9. INTRODUCTION FEES

- 9.1 Subject to Clause 9.2, (i) the direct and/or indirect Engagement by the Client of the Service Provider or any Service Provider Personnel subsequent to an Introduction by or through the Employment Business (whether directly or indirectly and whether or not the Employment Business is the effective cause of the Engagement), or (ii) the direct and/or indirect Engagement by a third party subsequent to an Introduction by the Client of the Service Provider or any Service Provider Personnel to that third party (whether directly or indirectly and whether or not the Client is the effective cause of the Engagement) renders the Client subject to the payment of an introduction fee calculated as follows:
- 9.1.1 where the Engagement is an employment relationship or other use of the Service Provider or Service Provider Personnel's services pursuant to which the Service Provider or Service Provider Personnel is entitled to an annual salary, or to a pro-rata salary if the Engagement is for less than 12 months, the introduction fee shall be:
- (a) if the engagement is for 12 months or more, 30% of the annual salary payable to the Service Provider or Service Provider Personnel in respect of the first 12 months of the Engagement; or
 - (b) where the Engagement is for less than 12 months, 30% of the annual salary that would have been payable in respect of the first 12 months of the Engagement had the Engagement been for a period of 12 months or more (calculated by dividing the amount to be paid by the number of days to be worked and multiplying by 365);
- 9.1.2 where the remuneration for the Engagement is not based on an annual (or pro-rata) salary or where the annual salary or remuneration is not known, the introduction fee will be calculated by multiplying the

hourly charge (where a day constitutes the equivalent of seven and a half hours) to the Client by the Employment Business for the Service Provider's or Service Provider Personnel's services by 375.

For the avoidance of doubt (and without limitation), the use by the Client of any social media or other internet or web-based technologies for the purposes of recruiting or satisfying itself as to the suitability of any Service Provider or Service Provider Personnel shall not affect the Client's obligation to pay the introduction fee where there has been an Introduction of the Service Provider or Service Provider Personnel by the Employment Agency.

- 9.2 The introduction fee will be payable pursuant to Clause 9.1 provided that the Engagement takes place within a period of 12 months from the termination of the Project for which the Service Provider or Service Provider Personnel was supplied, or if there was no supply, within the Relevant Period.
- 9.3 No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
- 9.4 Should the named Service Provider Personnel move employment and take up an Engagement with the named Client or with any third party to whom the Client has introduced such named Service Provider Personnel within 12 months of leaving the Service Provider, an introduction fee shall be payable, based on the calculation in Clause 9.1.

10. LIABILITY

- 10.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from each Service Provider and to provide the same in accordance with the Project details provided by the Client, no liability is accepted by the Employment Business nor any of the staff for any loss, expense, damage, costs or delay arising from the failure to provide a Service Provider for completion of the Project or from the negligence, dishonesty, misconduct or lack of skill of the Service Provider or Service Provider Personnel or if the Service Provider terminates the Project for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.
- 10.2 For the avoidance of doubt, neither the Service Provider nor the Service Provider Personnel are under the supervision, direction or control of the Employment Business. The Client will comply in all respects with all relevant statutes, bye-laws and legal requirements, including maintaining any insurances required by law in respect of the Service Provider. Where the Services are performed on the Client's premises or the premises of the Client's client, the Client shall indemnify the Employment Business against any costs, claims, damages and expenses incurred by the Employment Business as a result of any breach of these Terms by the Client or any claims by the Service Provider Personnel arising from any injury or loss of or damage to property suffered by them whilst on the Client's or the Client's client's premises.
- 10.3 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Employment Business set out under these Terms are reasonable and reflected in the charges payable to the Employment Business hereunder and shall accept risk and/or insure accordingly.

11. EMPLOYMENT BUSINESS'S OBLIGATIONS WHERE THE CLIENT IS DISSATISFIED

- 11.1 In the event that the Client is or becomes dissatisfied with the Service Provider or Service Provider Personnel the Client shall report details of its dissatisfaction in writing to the Employment Business forthwith.
- 11.2 In the event that the Client reports their dissatisfaction of a Service Provider or Service Provider Personnel, the Employment Business shall take whatever reasonable steps the Client requires to remedy the situation including (without limitation) terminating the Service Provider's agreement forthwith.

12. TERMINATION OF THE PROJECT

- 12.1 The Project shall commence on the date set out in the Schedule and shall continue until

terminated in accordance with these Terms or by mutual consent.

- 12.2 The Client may terminate the Project by giving to the Employment Business the notice specified in the Schedule.
- 12.3 The Client may terminate the Project forthwith by notice in writing to the Employment Business where:
- 12.3.1 the Service Provider has acted in breach of any statutory or other reasonable rules and regulations applicable to them while performing the services;
 - 12.3.2 the Client reasonably believes that the Service Provider has not observed any condition of confidentiality applicable to the Service Provider from time to time; or
 - 12.3.3 the Client finds the Service Provider and/or the Service Provider Personnel to be negligent, inefficient or technically incompetent or unsuitable for whatever reason.
- 12.4 The Employment Business may terminate the Project forthwith by notice in writing:-
- 12.4.1 if the Client is in wilful or persistent breach of its obligations under these Terms; or
 - 12.4.2 if the Client becomes bankrupt, or is unable to pay its debts as they fall due, or makes a proposal for or enters into any compromise or arrangement with any of its creditors, or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (save for the purposes of solvent reconstruction or amalgamation approved in advance in writing by the Employment Business), or an order is made for the appointment of an administrator or if an administrator is appointed over the Client, or a person becomes entitled to appoint a receiver over all or any of the assets of the Client or a receiver is appointed over all or any of the assets of the Client, or a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets.
- 12.5 Either party may terminate the Project forthwith should the other party fail to comply with the provisions of Clause 11 above.
- 12.6 Should the Contract be terminated by either party, the Employment Business will have two weeks exclusive working time to replace the Service Provider.

13. RESTRICTION

- 13.1 The Client warrants and undertakes that the Client shall not, during the period of the Project, utilise the services of the Service Provider and/or the Service Provider Personnel other than in accordance with the terms of this Contract and via the Employment Business.

14. EMPLOYMENT BUSINESS'S AGREEMENT WITH SERVICE PROVIDER

- 14.1 The Employment Business shall conclude an agreement with each Service Provider selected by the Client, which reflects the terms of the Contract.
- 14.2 The Employment Business's agreement with the Service Provider shall include (without limitation):
- 14.2.1 details of the Project, as provided to the Employment Business by the Client, including details of the Project which the Client requires to be completed and estimates of the numbers of staff in order for the Project to be satisfactorily completed;

- 14.2.2 a clause transferring the ownership of any intellectual property rights of whatever nature and whether registered or not, which may be created by the Service Provider in the course of performing the Project, from the Service Provider and or Service Provider Personnel to the Client;
 - 14.2.3 a termination clause allowing the Employment Business to bring the Service Provider's contract to an end forthwith if the Client, in the Client's absolute discretion, requires it;
 - 14.2.4 a confidentiality clause in the form of Clause 16 below;
 - 14.2.5 a substitution clause in the form of Clause 6.6 above;
 - 14.2.6 a warranty from the Service Provider that it will, when utilising any of its own equipment or intellectual property in carrying out the engagement, ensure that any security requirements reasonably required by the Client are complied with.
- 14.3 While the Client accepts that the Service Provider is in business on its own account and therefore may be engaged by other parties simultaneously to the Service Provider's performance of the Project, the Employment Business shall ensure that nothing in the Employment Business's agreement with the Service Provider will prevent the Service Provider from effectively performing the Project.

15. LIMITATIONS

- 15.1 The Employment Business has selected the Service Provider for the Client on the basis of the details of the Project and the Service Provider's expertise. Therefore the Employment Business:
- 15.1.1 is not and cannot be held responsible for the way in which the Service Provider chooses to fulfil the Project; and
 - 15.1.2 shall not be liable to the Client for the acts or omissions of the Service Provider.
- 15.2 The Employment Business has put forward the Service Provider for the Client's consideration in all good faith and therefore cannot be held responsible for any misrepresentations or misleading information provided by the Service Provider concerning the qualifications or experience of the Service Provider or its fitness or suitability for the proposed Project.
- 15.3 The Client will not hold the Employment Business responsible for any failure by the Service Provider to deliver according to the Project.
- 15.4 Except in respect of death or personal injury caused by the Employment Business's negligence, or as expressly agreed in writing between the parties, the Client accepts that the entire liability of the Employment Business under or in connection with the Contract shall not exceed £1,000.
- 15.5 In the circumstances, the parties agree that it is reasonable for the parties to agree that the Employment Business shall not be liable to the Client in respect of:
- 15.5.1 any delay, loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Client to the Employment Business or the Service Provider which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client;
 - 15.5.2 the Client making use of the Service Provider's services for any purpose not clearly disclosed to the Employment Business; or
 - 15.5.3 the Client allowing a third party the benefit of the services provided by the Service Provider;

- 15.5.4 any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims, whether in contract, tort (including negligence of the Employment Business or Service Provider), misrepresentation (unless fraudulent), for breach of statutory duty, or otherwise, which arises out of or in connection with the performance of the Project by the Service Provider or its use by the Client.

16. CONFIDENTIALITY

- 16.1 Both parties will take all reasonable steps to ensure that any documents or other materials and data or other information which are supplied to the other party under the Contract and are clearly marked as confidential remain confidential to the parties. Such information will only be made available by the parties to those personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties. Either party is entitled to demand the return of all copies of any such documents or other materials and data or other information within 7 days by giving the other party written notice.
- 16.2 This obligation of confidentiality will remain in force beyond the cessation or other termination of the Contract.
- 16.3 On the cessation or earlier termination of the Project, each party shall return to the other all documents or other material containing the confidential information.
- 16.4 This Clause shall not apply to any documents or other materials and data or other information which are already in the public domain at the time when they are provided by either party, and shall cease to apply where either party is required by law to make a disclosure or if at any time the information becomes public knowledge through no fault of the other party.
- 16.5 Both parties undertake that any information, which is received from the other party under the Contract, will only be used for the purposes of the Contract.

17. GENERAL

- 17.1 The relationship between the parties is one of independent contractors and nothing contained in the Contract shall be construed as constituting or establishing any partnership or joint venture or relationship of employer and employee between the parties.
- 17.2 The Employment Business shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Employment Business's obligations under the Contract, if the delay or failure was due to any cause beyond the Employment Business's reasonable control.
- 17.3 Both parties agree that these Terms are fair and reasonable in all the circumstances.
- 17.4 It is the Client's responsibility to ensure that all details of the Contract are correct and to accept the Schedule issued by the Employment Business before the Service Provider begins its placement with the Client. The Client will notify any issues regarding the Contract and the Employment Business before the Service Provider commences the Services. All issues must be resolved before the Service Provider commences work. If the Client does not raise any issues prior to the Service Provider commencing work, the Client shall be deemed to have agreed and accepted the terms of the Schedule.
- 17.5 If the Client fails to raise any objections or concerns in writing with regards to the Contract prior to the Service Provider commencing work under the Contract then the Client shall be deemed to have accepted the terms of the Contract.
- 17.6 Any issues regarding the Contract, which were known to the Client prior to commencement of the Contract, but not brought to the attention of the Employment Business in writing before the Service Provider began work, the Employment Business is not obliged to resolve.

- 17.7 These Terms and the Schedule contain the entire agreement between the parties and understanding between the parties and supersede all prior agreements, understandings and arrangements whether oral or written between the parties in respect of the subject matter of the Contract. The parties acknowledge that they have not entered into the Contract in reliance on any representation not expressly set out in the Contract and neither party shall be liable in respect of any representation made prior to and not contained in the Contract unless it was made fraudulently.
- 17.8 a) If any provision or part-provision of these Terms of Business is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void, invalid or unenforceable and it shall be binding in that changed or reduced form.
- b) If such modification under Clause 17.8a) is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 17.8 shall not affect the validity and enforceability of the rest of these Terms of Business.

18. LAW

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