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Sellick Partnership
Recruitment Specialists

CLIENT TERMS OF BUSINESS

We are Sellick Partnership Limited (throughout "we", "us", "our" and "ours") of The Tootal Buildings, Broadhurst House, 56 Oxford Street, Manchester, M1 6EU including, for the purposes of this agreement, our branch offices and our subsidiary or associated companies (Companies Act 2006).
You are a Client or potential Client of ours and are the recipient of these Terms of Business (throughout "you", "your" and "yours") and, for the purposes of this agreement, includes an Associate.

Once you have received this document, comprising this page and the pages that follow, any act by you of accepting or requesting services from us, or using in any way information from us relating to a Candidate, is deemed to be and shall constitute your acceptance of these Terms of Business. Upon such acceptance, and in consideration of the mutual benefits set out herein, it is agreed as follows:

Introduction
We provide a range of services that relate to the introduction or supply of candidates. We are governed by regulations that require us to specify our terms that apply when we act as an Agency (where we only introduce candidates to you – see primary terms) or an Employment Business (where we supply candidates to you – see supply terms). The terms in this document set out the arrangements and fees for our service in each case, together with the information that we are obliged to collect from you for the benefit of our candidates, so that we can provide a first class service to you.

Fee Scale for Permanent Candidates
18% on Remuneration up to £20,999
22% on Remuneration from £21,000 up to £24,999
25% on Remuneration from £25,000 up to £39,999
30% on Remuneration from £40,000 and above

Fee Scale for Temporary/Contract Candidates
– see Schedule 1 Supply Terms

Rebate Scale
Week = week in which employment ends

Proportion of Fee	Week	
(a) 75%	1-2	this means that if employment ends during the first two weeks 75% will be rebated
(b) 50%	3-8	this means that if employment ends during weeks 3-8 50% will be rebated
(c) 25%	9-12	this means that if employment ends during weeks 9-12 25% will be rebated

SECTION 1 PRIMARY TERMS – PERMANENT AND DIRECT CANDIDATES

our agreement and capacity

1. It is agreed that these Terms of Business apply to all dealings between you and us relating to the business described. The terms in this section and Sections 2 and 3 apply to all arrangements for introductions of Candidates. We operate as an Agency (as referred to in the Regulations), unless otherwise specified.

our general obligations

2. We agree in relation to all our services to use our reasonable endeavours to locate Candidates for you in accordance with your Requirements, to make Introductions, to arrange Assignments, and to provide any agreed Additional Services.

your agreement

3. You agree to accept our Candidate introduction services and you acknowledge and agree the following:

(a) the Regulations require us to provide specific information to each Candidate in relation to any Requirement; accordingly to enable us to comply with our obligations
  (i) upon issuing a Requirement or as soon as possible thereafter you shall provide to us sufficient and accurate information to enable us to seek Candidates that may be suitable for you including the Information, and provide us with answers to any additional questions we may raise in that regard
  (ii) prior to an Assignment you shall notify us of any additional information that may affect the information already provided or be relevant to the decision of a Candidate to accept work proposed in the Requirement

(b) you warrant and/or undertake that all information provided under clause 3(a) is/shall be full and accurate

(c) in the case of each Requirement and Assignment, regardless of any statutory obligation we may have to take various steps, it is your responsibility to check that the Candidate is suitable for your purposes and that you are satisfied with the information and confirmations we have provided to you, and you agree in particular
  (i) regardless of any references or information that we may provide, to take up such references for the Candidate as you think fit and verify the curriculum vitae supplied
  (ii) to ensure that the Candidate has any necessary permit or authority to work for you and comply with asylum and immigration requirements relevant to an employer
  (iii) to explain your requirements to the Candidate promptly on commencement if you have not already done so

(d) you warrant that if you have interviewed the Candidate prior to commencement of the Assignment you have explained to the Candidate your requirements and satisfied yourself that the Candidate is suitable for those requirements

(e) by reason of your acceptance of clauses 3(a) to (d) we shall not be liable for any loss or damage arising out of any representation made by us in good faith that may have induced you to accept an Assignment, or for any breach of contract, negligence or tort of the Candidate and you will fully indemnify us and keep us so indemnified against any claim or action, including the costs thereof (on an indemnity basis), brought by a Candidate, or another business (of any kind) with which we have been dealing in relation to a Requirement, arising from incorrect or incomplete information provided by you to us

(f) you will keep us promptly informed of your intentions in relation to an Engagement of a Candidate throughout an Assignment and/or the Fee Period, but this requirement will not apply if you have engaged the Candidate under an Agency Assignment that is permanent unless we have paid to you any Rebate under that Assignment

(g) if you have previous knowledge of a Candidate prior to a first Introduction by us you shall notify us in writing within 3 business days of the Introduction together with supporting documentary evidence, and in the absence of such notification you waive the right to rely on such previous knowledge as a reason for non payment of any Fee and the Introduction is deemed to be the effective cause of introduction

(h) in relation to any Engagement you shall within 7 days of our written request provide to us information to enable us to identify the Remuneration and term of the Engagement including details of any renewal or extension of an Engagement or of any new Engagement relating to a Candidate effected within the Fee Period

(i) where there is an Agency Assignment, you are solely responsible for the contractual arrangements with, and payment to, the Candidate at all times

(j) you shall ensure that there is suitable accommodation available and, unless otherwise agreed with us, pay the travel costs to such accommodation of any Candidate that we Introduce to you that you intend to Engage, but not employ, if the Candidate must live away from home in order to work for you.

fees, rebates and remuneration

4. In relation to fees and rebates the following shall apply:

(a) wherever there is an Engagement within the Fee Period, or there is an Additional Service, you shall pay the Fee in accordance with the Payment Terms without any deduction, set off or counterclaim, subject only to any entitlement to a Rebate, and for the purposes of our Fee an Engagement during period (a) of the Fee Period as defined is deemed to be as a result of the relevant Introduction regardless of any information relating to the Candidate you may have received from any third party unless you have notified us in accordance with clause 3(g)

(b) where you are entitled to a Rebate we agree to make payment to you within 28 days of the date on which all of the Rebate Conditions have been complied with but, for the avoidance of doubt, if we have Introduced a replacement Candidate as referred to within the Rebate Conditions you shall not be entitled to a Rebate and we shall not be entitled to charge any further fee.

(c) you shall promptly repay any Rebate
  (i) which is either not properly due to you or
  (ii) if you re-Engage the relevant Candidate within 12 months of the termination which entitled you to a Rebate

(d) Remuneration shall be calculated on an annualised basis subject to a minimum 37.5 hour working week. For the avoidance of doubt, candidates engaged on a part-time basis will be invoiced on a full time equivalent, based on a minimum of 37.5 hours, and the fee will not be pro-rated. If you have not informed us of the full projected sum within 14 days of enquiry from us, or by any later date we raise an invoice, Remuneration shall be deemed to be an amount calculated on the basis of either the rate payable under the last previous Assignment of any kind that was temporary, or where there has been no such previous Assignment, the highest amount or rate indicated by either you or us as payable for the services sought by you at the time of the Introduction of the relevant Candidate

(e) we shall issue an invoice to you for the relevant Fee under each Engagement upon, or as soon as is appropriate after, the commencement of the Engagement, or at any intervals agreed for payment in an Assignment, or at the time agreed in respect of Additional Services, as the case may be, but any delay in issue shall not affect our entitlement to payment in any event

(f) where an Assignment is for a fixed period of less than one year, we may, as a concession and at our sole discretion, accept that Remuneration shall be calculated as the actual amount agreed to be paid for the fixed period, provided that,
  (i) you have first notified us in writing prior to the commencement of the Assignment of the term of the fixed period and the full amount payable for that period and
  (ii) prior to the commencement of the Assignment we have accepted in writing that the Remuneration will be calculated only on the basis of the fixed period, and not on an annualised basis, and
  (iii) you pay the concessionary sum within 7 days of the date of our invoice

(g) if clause 4(f) applies we shall be entitled to raise a further invoice for a fee calculated on the balance of one year's Remuneration (taking into account the calculation for the fixed period) if there is any extension of the Assignment beyond the term notified under clause 4(f)(i) or if you re-engage the Candidate within 12 months of the beginning of the Assignment, and you undertake to notify us if either of those events occur within 7 days of the occurrence

(h) an Offer shall be deemed to be an Engagement unless the Offer is rejected by the Candidate or unless you withdraw the Offer for the reason that you have since come into possession of information which you have provided to us that the Candidate is not suitable for the position offered by you, and Remuneration in this event shall be calculated on the projected sum contained within the Offer – this means that if you withdraw an Offer before it is accepted for any reason, other than suitability, we shall nevertheless be entitled to our Fee.

additional provisions

5. It is also agreed that

(a) where a Requirement is for an Introduction of a Candidate to be supplied by us on a Temporary Assignment, because you acknowledge that you may at any time employ the Candidate such Requirement shall be, and shall be treated by you and us as, a requirement for an Agency Assignment until such time as you agree all the terms of the Temporary Assignment in relation to the Candidate or Candidates proposed to be supplied by us to you

(b) following the end of a Temporary Assignment in each case, the fact of termination of such Assignment shall constitute a Requirement by you for an Agency Assignment of the Candidate concerned (although there is no obligation upon you to take any such Candidate upon an Agency Assignment) and our capacity in relation to you at that time shall become or revert to that of an Agency, and the Supply Terms shall cease to apply

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(c) during the Period of Supply the Supply Terms apply exclusively in place of the terms set out herein save for any clauses herein that are referred to as comprised within the Supply Terms
(d) if there is an Engagement during or after a Period of Supply (notwithstanding the above) we are entitled to charge whichever is the greater of
  (i) a Fee under these Terms of Business (in our capacity as an Agency) or
  (ii) a Transfer Fee under the Supply Terms (in our capacity as an Employment Business), unless you are entitled to and have served a Transfer Notice in accordance with the Supply Terms
(e) we are authorised by you to advertise in any medium we deem appropriate to source Candidates where you have issued a Requirement to us

SECTION 2 DEFINITIONS AND MEANINGS - PRIMARY TERMS

General Definitions

Additional Fee - a fee agreed between you and us for an Additional Service provided by us, and any Expenses
Additional Service - an additional specific service we provide to you, following a request from you (which may be ancillary to or as part of our service as an Agency, or, where applicable, Employment Business or which may relate to other business)
Assignment - an Engagement negotiated and agreed through us, and of which you have informed us prior to its commencement - NOTE an Engagement which you do not tell us about in advance is not an Assignment – being either
(a) an **Agency Assignment**, where the Candidate is Engaged and paid direct by you or an End User or
(b) a **Temporary Assignment**, where we supply and pay the Candidate who or which is employed or engaged by us and which is subject to the Supply Terms
Associate - a person with whom we conduct business, being (a) a subsidiary or associated company (Companies Act 2006) of yours, or (b) a business (whether corporate or unincorporated)
(i) which is a member of, director of, or partner in, your company or business, or
(ii) of which you are a member, or director or partner, or
(iii) for which either you, or a representative of yours is authorised by you (whether expressly or impliedly) to, undertake work (other than solely in a professional capacity)
AWR - the Agency Worker Regulations 2010.
Candidate - any person, whether employed or self employed, and/or a limited company through which a person is offering services, or a supplier company, in respect of whom or which, or in respect of whose skills or services, information is provided to you by us
End User - any third party to whom you provide information concerning a Candidate following an Introduction and for whose benefit the Candidate provides any services, and any associate (as defined by s.435 Insolvency Act 1986) of that third party
Engagement - any engagement or employment of any description (including as defined by s.13(1)(a) of the Employment Agencies Act 1973) under an Assignment or otherwise, whether direct or indirect, under which a Candidate is due to provide any services for the benefit of you or to an End User including, but not limited in meaning to, an engagement or employment which is temporary or permanent in nature or through the intermediary of a limited company or by contract through a third party and "Engage", and "Engaged" shall have corresponding meaning
Expenses - any agreed expenses to be paid by you
General Terms - the terms set out in Section 3 applicable to all Engagements
the AWR and Regulations require us to provide specific information to each Candidate to enable us to comply with our obligations. As soon as possible following our receipt of the Requirement you shall provide to us sufficient and accurate information to enable us to seek a candidate that may be suitable for you and provide us with answers to any additional questions we may raise in that regard. The information provided by you must include:

Information for each Requirement including

- role or position to be filled and date for commencement
- nature of the work and/or position required
- working conditions and location
- proposed salary and/or other payment terms
- any issues relating to health and safety and steps taken by you to prevent or control risk or information which may affect a decision to accept work
- experience and qualifications required for the Candidate
- details of any requirements of law or professional bodies and confirmation that you have all necessary licences and consents

  (ii) prior to an Assignment you shall notify us of any additional information that may affect the information already provided or be relevant to the decision of a Candidate to accept work proposed in the Requirement
  (iii) you confirm that the terms of the Candidate's Assignment are comparable to a comparable permanent employee

HMRC CEST Tool – the online government tool Check Employment Status for Tax that can be found here: https://www.gov.uk/guidance/check-employment-status-for-tax
Introduction - the provision of information by us or by a Candidate that enables you to identify a Candidate or relating to a Candidate, already identified, including all negotiations between you and us relating to a Candidate and "Introduce" shall have corresponding meaning
IR35 – the off-payroll working tax rules for End User clients, Candidates and their intermediaries
Offer - an offer, in principle or otherwise, expressing the desire to Engage the Candidate, and communicated by you, or us at your request, to the Candidate
Opt Out Notice - a notice of agreement between a person and a company through which that person is supplied that Regulation 32(1-8) of the Regulations do not apply
Payment Terms – in all cases you shall pay our invoice within 7 days from the invoice date, if we do not submit an invoice the Fee remains due and is due within 7 days of commencement of the Engagement. If payment is late you shall pay interest on any overdue sum calculated at the rate of 8% per annum, if we need to take legal action against you for non payment we will recharge to you all legal costs
Period of Supply - the period during which we actually supply a Candidate to you under a Temporary Assignment whether or not the relevant Assignment confirmation provides for a longer or shorter term
Regulations - the Conduct of Employment Agencies and Employment Businesses Regulations 2003
Remuneration - the proposed or projected sum (whichever is higher) payable by you or an End User for the benefit of the services of a Candidate under an Engagement calculated in accordance with clause 4(d) of Section 1 together with the value attributable by HM Revenue & Customs of all taxable benefits provided under the Engagement
Requirement - a request from you in any form for an Introduction or other service
Special Terms - specific terms, whether or not referred to as a specific additional agreement (SAA), relevant to a stated Requirement, agreed with you and set out in a Requirement confirmation or an Assignment confirmation and which vary terms applicable only to that Requirement
Supply Terms - the terms of business set out in Schedule 1 which apply to Temporary Assignments, and which do not form part of the terms in Section 1 – Note: the Supply Terms are a separate agreement contained within this document for convenience only
Terms of Business - the terms herein, which comprise our agreement with you, but excluding the Supply Terms unless, and to the extent, they are stated to apply

Fees Definitions

Fee -
(a) the fee you are obliged to pay us in the event of an Engagement – this is dependent on the type of Engagement as follows:
  (i) **for the permanent hire of a Candidate**, namely one that is not a temporary direct hire of a Candidate, our fee will be calculated in accordance with the Fee Scale for Permanent Candidates with a minimum fee of £2,500, save and to the extent that any other scale or terms are stated or agreed by us to apply,
  (ii) **for the temporary direct hire of a Candidate** negotiated and agreed with us our fee is an amount based on 30% of the weekly or monthly sum that you pay to the Candidate for the period of the hire subject to a minimum of 6 months.
  (iii) **for a Temporary Assignment**, our fee in accordance with the Supply Terms,
  iv) **for an Engagement in any other circumstances**, a fee as if the hire were permanent and the Client shall not be entitled to any pro rata reduction for periods of hire of less than 1 year, and
(b) **in any event** any Additional Fee

Fee Period - any time
(a) during the later of 12 months after
  (i) an Introduction relating to the Candidate concerned or
  (ii) the last Assignment of the Candidate concerned, or
(b) after an Introduction where the Introduction was the effective cause of the Engagement

Rebate - the proportion of the Fee (but not the Additional Fee) we will rebate in accordance with the Rebate Scale if all of the Rebate Conditions apply and your employment of a Candidate ends within 12 weeks of commencement of the employment (**"Timescale"**)
Rebate Conditions -
(i) the arrangement is an Assignment under which the Candidate is employed by you under a contract of service on a basis intended to be permanent (for the avoidance of doubt there are no rebates payable on placements that were intended to be for a fixed term only), and
(ii) the Candidate has not previously been Engaged by you, and
(iii) the employment ends within the Timescale by reason of the fact that the Candidate is not suitable for the position offered by you and accepted by the Candidate, and
(iv) you have provided us with full and correct information as to the position sought to be filled in accordance with clause 3(a) in relation to the Candidate, and the position is as described, and
(v) you have first paid the relevant Fee no later than 7 days after the earlier of the date of commencement of the employment or the date of our invoice (paid is defined as cleared monies in the Sellick Partnership bank account displayed on the invoice), and
(vi) you have notified us in writing of the fact, and date, of termination no later than 3 working days after the earlier of the date of notice of termination given by either party or the date the employment ends, and
(vii) you have in good faith allowed us to Introduce a suitable replacement Candidate for the same position and we have not, within 28 days of your notification to us under (vi), been able to make such Introduction which leads to an Engagement.

SECTION 3 GENERAL TERMS APPLICABLE TO ALL BUSINESS

The general terms set out below apply to all Engagements and matters under the Terms of Business in this document

(a) We shall advise you of the terms of each Assignment unless, in the case of an Agency Assignment, you have concluded negotiations with the Candidate direct
(b) Whilst at all times we shall act in good faith we give no guarantee or warranty that we will be able to locate any suitable Candidate, or that any Candidate we Introduce is suitable for your purposes at any time
(c) Where you directly hire a temporary Candidate you are responsible for the health and safety of the Candidate and for ensuring that the conditions of work are at all times suitable for the Candidate and for payment to the Candidate
(d) Unless you have notified us otherwise prior to the commencement of an Assignment, you warrant that there are no circumstances relevant to the work, or any aspect of an Assignment, which may result in the Candidate suffering a detriment of any kind
(e) For the avoidance of doubt, during period (a) of the Fee Period there is no implied term that an Introduction be the effective cause of an Engagement
(f) We have received an Opt Out Notice, where a person we Introduce is provided by or through a company and we have informed you of the existence of the company, unless we notify you otherwise
(g) All fees are subject to value added tax which will be charged in addition, and for the purpose of calculating our Fee, Remuneration in foreign currency will be calculated at the Bank of England sterling exchange rate applicable on the date of our invoice
(h) An Assignment does not comprise any variation to these Terms of Business, and where times are referred to herein such times are of the essence
(i) You shall keep any information comprising an Introduction confidential and not use it for any purpose other than that disclosed by you to us at the time the information was requested; in particular you shall not directly or indirectly induce nor seek to induce a Candidate that is engaged by contract to us to terminate such contract for any reason and it is agreed that should you be in breach of this provision you shall be liable to us

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for liquidated damages for each breach in the sum of £20,000 being estimated damages that you agree are reasonable for our loss

(j) Neither we nor our staff shall be liable to you for any loss, damage, delay or compensation of any kind whether in contract or tort, or for breach of the Regulations by any person other than us, arising out of these Terms of Business or an Assignment and you shall indemnify us against any costs claims or demands arising from any claim by you save to the extent prohibited by the Regulations or other operation of law

(k) Without prejudice to clause (j) of this Section and clause 3(e) of Section 1, our liability shall, in any event other than where liability cannot be limited by law, be in respect of direct losses only, not exceed £1million in any case, and be limited in the case of
  (i) an Agency Assignment to the lower of repayment of our Fee, or £100,000
  (ii) a Temporary Assignment to a sum equivalent to the Fee payable for 1 month under the relevant Assignment

(l) You agree that the liability terms and limits set out in clause 3(e) of Section 1, and (j) and (k) of this Section, are reasonable

(m) Neither you nor we shall divulge to any other party, or use for your or our own benefit, any information capable of being confidential relating to the affairs of your or our business or business methods, or confidential information, received from each other, except that which is in the public domain or is trivial or obvious or authorised to be released or required by Court Order to be disclosed

(n) Other than for third party rights specifically conferred in or under this agreement or in Special Terms, the Contracts (Rights of Third Parties) Act 1999 is excluded

(o) Each portion of this agreement, defined by punctuation and/or sections or numbering, is separate, distinct and severable and to give meaning to the intention of you and us the Court may modify any portion that may otherwise be void; subject thereto, any void portion may be severed and the remaining provisions shall continue in force

(p) Any notice under this agreement shall be in writing and sent to the addressee at the last known postal or email address, and shall be deemed to have been received, in the case of post on the postal date following the date of posting, and in the case of electronic mail on the date electronic confirmation of receipt is received by the sender

(q) Save for any Special Terms, the terms set out in the Terms of Business are the sole and entire agreement between you and us relating to the business described, supersede any previous terms issued by us, and override any terms proposed by you, and you acknowledge that you have not relied on any representations made by us that are not set out in these terms; these terms may not be varied except either by us in providing you with a general amendment notice, which will be deemed to apply unless you notify us in writing that you do not accept the amendments within 7 days of receipt of the notice, or by agreement (whether orally or otherwise) and confirmed in writing signed by a director of ours; any terms provided by you to us and included within any request for services shall not apply unless we expressly agree the same in writing signed by a director of ours and no other action by us shall imply acceptance by us of any such terms

(r) The laws of England and Wales govern this agreement and the English Courts shall have sole jurisdiction.

(s) You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with enforcement of this agreement.

SCHEDULE 1
SUPPLY TERMS - TERMS RELATING TO THE SUPPLY OF TEMPORARY CANDIDATES/CONTRACTORS

1. The terms in this Schedule apply to our supply to you of Candidates on a Temporary Assignment. The Terms are subject to the definitions in clause 12, the General Definitions (excluding the Fees Definitions) and General Terms set out respectively in Sections 2 and 3 of the Principal Agreement, and are effective upon commencement of a Temporary Assignment unless we are only acting as an Employment Business in relation to you and any Candidate. The terms in this Schedule are separate and distinct from the terms set out in any other part of the Principal Agreement, and comprise a separate agreement.

our agreement and capacity

2. It is agreed that

(a) in respect of a Temporary Assignment unless we inform you otherwise our capacity in relation to you shall be and be deemed to be that of an Employment Business (as referred to in the Regulations) until the end of the Temporary Assignment

(b) on termination of a Temporary Assignment, however caused, the terms in this Schedule cease to apply except as provided for, but without affecting responsibilities that arise during the Period of Supply.

our obligations

3. We agree to supply a Candidate to you as agreed in the Temporary Assignment (which may be set out in an Assignment confirmation) subject to the provisions set out in clause 4, where applicable to allow the Waiver Sum against an invoice issued to you if the Candidate proves wholly unsuitable for your purposes within 1 working day of commencement of the Assignment and you notify us within that period of the unsuitability of the Candidate, and to invoice you (a) for the Fee at the times agreed in the Temporary Assignment or (b) in the case of a Transfer Fee at any time after we become aware of the Transfer.

conditions and your obligations

4. You agree to accept the services subject to the terms in this Schedule and you acknowledge and agree that the following conditions apply

(a) the provisions in clauses 3(a) to (h) of Section 1 of the Principal Agreement apply as if the same were repeated herein and that you will comply with the provisions

(b) you shall pay the Fee in accordance with the Payment Terms without any deduction, set off, or counterclaim

(c) as an ongoing obligation throughout a Temporary Assignment you agree to

(i) be responsible for the health and safety of the Candidate as if the Candidate were a worker directly engaged by you, and, without limiting that responsibility in any way, you shall

- undertake risk assessments of the activities required to be undertaken by the Candidate and provide a notification to the Candidate and us immediately of any specific or potential hazards relating to the Assignment and the precautions that the Candidate should take relating to that risk (**"Notification"**);
- not allow the Candidate to undertake any work that is hazardous without first undertaking the assessment and providing the Notification and ensuring that the work complies with all health and safety procedures and requirements relevant to that work;
- ensure that any equipment or vehicles provided by you for the use of the Candidate are in good order, suitable and safe and compliant with all relevant regulations and safety requirements;
- maintain adequate Employer's and Public Liability Insurance which provides cover for Candidates supplied by us

(ii) notify us in writing within 2 working days of the respective working week ending (and before authorising the candidate timesheet) if you are not satisfied with a Candidate, giving details of your reasons for that dissatisfaction

(iii) ensure that the Candidate is aware of any regulations applicable to external contractors

(iv) be solely responsible for providing reasonable directions and instructions to the Candidate as to the work to be undertaken and for checking the quality of the work completed and compliance with such instructions by the Candidate, but without conflicting with clause 4(c)(vi), and you shall provide such instructions and suitable facilities to the Candidate as are necessary to enable the services of the Candidate to be provided

(v) allow us to suspend the services of the Candidate if (a) the Candidate or a person supplied by the Candidate wishes to take annual leave and you have agreed a period of leave in advance, or (b) the Candidate or a person supplied by a Candidate is absent due to sickness, provided that we shall notify you as soon as practicable of any required absence for sickness

(vi) not integrate the Candidate into your workforce or treat the Candidate as an employee or do any act or thing towards the Candidate which may be regarded as the act of an employer towards an employee, for any purpose, but not so that this shall prejudice your obligations in relation to health and safety

(vii) if required by us for the Assignment, you will complete the HMRC CEST Test to determine if the off payroll working rules apply to the Assignment under the tax legislation known as IR35, you will complete this test truly, fairly and to the best of your knowledge and you will abide by the answers given to this test, if you agree that you will not reject a substitute then you will not reject for the entirety of the Assignment, you will deliver to us the result of this test (together with all answers) by email in the prescribed PDF format produced by the test no later than 1 day before the Assignment commences, if you become aware of any changes that may alter the result of the test before or during the Assignment, it is your responsibility to re-test and deliver the result of this re-test to us promptly

(d) you agree not to discuss with the Candidate the terms of the Candidate's engagement with us, other than strictly as required for the proper objectives of the work required under the Assignment, and you agree that the Candidate is not an employee of yours and that neither the Candidate nor you has any obligation to the other to perform or provide work for any specific period

(e) in our contract with the Candidate, which shall be a contract for services unless we inform you otherwise, we shall procure that the Candidate agrees

(i) to perform the work required under an Assignment in good faith, and with due care and skill, and that the Candidate will not perform any work during the Period of Supply for any third party which is in conflict with your interests

(ii) where appropriate not to make use of your confidential information in terms similar to those set out in clause (m) of the General Terms

(iii) where applicable to deliver up to you or an End User where appropriate respectively any of your or the End User's papers and other materials held by the Candidate upon termination of the Assignment

timesheets and records

(f) you shall keep records of the time spent and/or work provided, as the case may be, by the Candidate until all matters under the Temporary Assignment are concluded and you agree to cooperate with us in relation to any query

(g) at the end of each week you shall verify a correct record of hours worked by the Candidate and authorise time records provided by the Candidate or us or, in the case of project work chargeable upon deliverables, verify the objectives achieved at the relevant time on records provided by the Candidate or us, your approval on such time sheets or records being conclusive evidence of the acceptance of works undertaken by the Candidate for the relevant period; you shall not be entitled to refuse payment if you have approved the time sheet, any alleged dissatisfaction with the quality or hours of work must be raised before approving the timesheet – if there is any dispute about time spent you shall produce to us your own record of time spent and pay for that time pending resolution of the dispute

replacement

(h) if clause 4(c)(ii) applies you must allow us at least 2 working days to find and supply a suitable replacement

(i) if we do not provide a suitable replacement in accordance with clause 4(h) you or we may terminate the Temporary Assignment by giving notice to the other

termination

(j) we may terminate a Temporary Assignment immediately without liability and without prejudice to any right for relief if you are in breach of any of the terms herein, or if, in good faith, we form the opinion for any reason, which need not be reasonable, that (i) you may not meet your obligations to us or a Candidate, or (ii) our Candidate may no longer be willing, or able or suitable to undertake work for you

(k) either you or we may terminate a Temporary Assignment by giving notice to the other (i) of the notice period where a notice period is agreed for termination of an Assignment, or (ii) if the other shall commit an Insolvency Event, namely that it becomes insolvent within the meaning of the Insolvency Act 1986 or has a receiver appointed or an order or resolution made to wind it up or enters into any arrangement or composition with its creditors or passes a resolution to cease trading or actually ceases trading or being an unincorporated body is dissolved or declared bankrupt

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CLIENT TERMS OF BUSINESS

(l) if a Temporary Assignment is terminated (i) by notice under clause 4(k)(i) you shall make payment to us of the Fee for the period of such notice whether or not you utilise the services of the Candidate for the period of the notice, or (ii) on the basis set out in clauses 4(j) or 4(k)(ii) you agree we are not at fault and you accept that we have taken a prudent commercial step to avoid loss or potential loss.

Transfer Fees and Optional Extension

5. Subject to clause 7, if you Engage a Candidate other than through supply by us either directly or through the medium of a third party during the Period of Supply, or thereafter within the Transfer Period, you shall upon the Engagement pay us a Transfer Fee.

6. If during the Period of Supply, or thereafter within the Transfer Period, you introduce (by providing information or otherwise) a Candidate to a third party which enters into an Engagement of the Candidate either directly or through the medium of another party, you shall upon the Engagement pay us a Transfer Fee.

7. Where an Opt Out Notice does not apply, no Transfer Fee referred to in clause 5 shall be due if, before the Engagement, you have served us with a written notice (a **"Transfer Notice"**) that you agree to take a supply of the Candidate through us for a further period of 12 months upon the terms (the **"Option Terms"**) set out in clause 8 and you actually take a supply of the Candidate from us upon the Option Terms for the agreed period without any break other than similar to those allowed for under the previous Temporary Assignment unless we are at fault in failing to supply the Candidate.

Option Terms

8. The Option Terms are

(a) you first provide us with any relevant information to enable us to comply with the Regulations

(b) save in respect of the period and the amount of the Fee, the terms are the same as the terms relating to the last preceding Temporary Assignment of the Candidate including clause 4, or are such other terms as we agree with you in advance

(c) the Fee shall be the same as that under the last preceding Temporary Assignment of the Candidate unless the Candidate requires us to increase our payment to the Candidate in which event the Fee shall be increased by such sum as reflects the increase required by the Candidate as we shall notify to you; for the avoidance of doubt our Charge shall not increase.

9. You further agree in relation to a further supply under clause 7

(a) if you have agreed other terms as referred to in clause 8(b) that are any different from those relating to the last preceding Temporary Assignment, or the Fee is increased in accordance with clause 8(c) your agreement to such terms is your unequivocal acceptance that the different terms do not represent terms that are less favourable to you than under the last preceding Temporary Assignment of the Candidate

(b) if we lawfully terminate the further supply on the basis set out in clauses 4(j) or 4(k)(ii) we are not, and we shall not be deemed to be, at fault in causing termination

(c) notwithstanding your agreement in clause 9(a) if you should maintain at a later date than the start of the further supply that the terms represent terms that are less favourable to you than under the last preceding Temporary Assignment of the Candidate, the Temporary Assignment, which would otherwise have been regarded as an Optional Extension, shall be regarded as a period of new supply and shall be a new Temporary Assignment.

10. Without prejudice to clause 5 of Section 1 of the Principal Agreement, if we are only acting as an Employment Business in relation to you and you intend to Engage a Candidate we have Introduced before any supply, you shall either pay the Transfer Fee or, where no Opt Out Notice applies, you may elect by giving us notice prior to the Engagement to take a supply of the Candidate through us on the terms herein for 12 months at the rate we pay the Candidate plus our Charge of 30%.

11. For the avoidance of doubt

(a) we shall not be at fault in failing to supply the Candidate under an Optional Extension if the Candidate does not provide services because the Candidate is not ready, willing or able to do so, or if the services are not provided due to a material breach of these terms by you of which we have informed you

(b) you shall not be entitled to any discount against the Transfer Fee if the supply is ended before the period of Optional Extension has expired.

12. The following definitions apply to this Schedule: Fee -

(i) the amount specified by us as our fee in respect of the Temporary Assignment, calculation being based upon the total of the cost to us of supplying the Candidate (including statutory payments we make to the Candidate) plus our charge ("Charge") from time to time which shall not exceed 30% of the specified amount,

(ii) any Additional Fee, and

(iii) a Transfer Fee

Optional Extension - a Temporary Assignment that comes into being on the terms set out in clause 8 following the service of a Transfer Notice under clause 7 and for the purposes of these terms any reference to the Period of Supply includes the period of an Optional Extension

Principal Agreement - the document of which this schedule forms part

Transfer Fee - 30% of Remuneration applicable in the circumstances set out in clauses 5 to 7 and 10

Transfer Period - within the later of

(i) 14 weeks from the first day of supply by us of the Candidate to you (disregarding any supply that ended more than 42 days prior to any new supply) or

(ii) 8 weeks after the last day of supply or

(iii) where an Opt Out Notice is in effect in relation to that Candidate, 12 months after the last day of supply

Waiver Sum - the sum payable by you to us under a Temporary Assignment for the supply of a Candidate less the sum we have agreed to pay the relevant Candidate.

13 Data Protection

(a) For the purposes of this clause 13 "Data Subject" will be interpreted in accordance with Data Protection Legislation. For the avoidance of doubt, Data Subject includes the Candidate/Contractor.

(b) The parties hereto acknowledge that we are a Data Controller in respect of the Personal Data of the Candidate/Contractor and provides such Personal Data to Client in accordance with the Data Protection Legislation for the purposes anticipated by these terms. We will ensure data is processed in line with our Data Processing Notice (https://www.sellickpartnership.co.uk/data-processing-notice).

(c) The parties hereto acknowledge that Client is a Data Controller but the parties hereto are not Joint Controllers (as defined within Data Protection Legislation) save where a specific agreement is made to that effect between the parties hereto.

(d) The parties hereto agree that the Contractor/Candidate is not Client's Data Processor (as defined within Data Protection Legislation) save where agreed otherwise within a contractor schedule and subject to additional terms and conditions.

(e) The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by Client, by us or by the Candidate or Contractor, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation and we will ensure we process data in line with our Data Processing Notice (https://www.sellickpartnership.co.uk/data-processing-notice).

(f) The parties hereto will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.

(g) Client will -

  (i) comply with our instruction in regards to the transfer/sharing of data between the parties hereto. If the Client requires Personal Data not already in its control to be provided by us, the Client will set out their legal basis for the request of such data and accept that we may refuse to share/transfer such Personal Data where, in our reasonable opinion, it does not comply with its obligations in accordance with Data Protection Legislation;

  (ii) not cause us to breach any of our obligations under the Data Protection Legislation.

(h) In the event the Client becomes aware of an actual or any reasonably suspected Personal Data Breach, it will immediately notify us and will provide us with a description of the Personal Data Breach, the categories of data that was the subject of the Personal Data Breach and the identity of each Data Subject affected and any other information the we reasonably request relating to the Personal Data Breach.

(i) In the event of a Personal Data Breach, the Client will promptly (at its own expense) provide such information, assistance and cooperation and do such things as we may request to -

- investigate and defend any claim or regulatory investigation;
- mitigate, remedy and/or rectify such breach; and
- prevent future breaches.

and will provide us with details in writing of all such steps taken.

(j) The Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval from us, unless the Client is legally obliged to do so.

(k) The Client agrees it will only Process Personal Data of the Candidate or of the Contractor for the agreed purpose of provision of Services pursuant to these Terms.

(l) The Client will provide evidence of compliance with clause 10 upon request from us.