

## Terms of Business

We are Red 10 Limited ("Red 10") of 4<sup>th</sup> Floor, 44 Carnaby Street, London, UK, W1F 9PP and "we", "us", "our" and "ours" refers to Red 10 and all branch offices of Red 10. Red 10, for the purposes of this agreement, includes any subsidiary or associated company (as defined by s.736 Companies Act 1985) of Red 10.

You are a Client or potential Client of ours and are the recipient of these Terms of Business and "you", "your" and "yours" refers to you. For the purposes of this agreement "you" includes any subsidiary or associated company (as defined by s.736 Companies Act 1985) of yours and any Associate. Once you have received this document 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:

### definitions and meanings

- A **Associate** - a business (whether corporate or unincorporated)
- (i) which is a member of or partner in your company or business, or
- (ii) of which the shareholders or partners hold a combined equity stake in your business of more than 25% of partnership capital or nominal share value, or in which you or your directors or partners hold an equity stake of more than 25% of partnership capital or nominal share value
- B **Candidate** - any individual, whether employed or self employed, and/or a limited company through which an individual is offering services, or a supplier limited company, in respect of whom or which, or in respect of whose skills or services, information is provided to you by us
- C **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
- D **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
- E **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 under a contract of service or a contract for services or through the intermediary of a limited company or by contract through a third party and "Engage", "Engaged" and "employ" shall have corresponding meaning
- F **Assignment** - an Engagement negotiated and agreed with us, an **Agency Assignment** being one, whether permanent or temporary, where the Candidate is employed or Engaged by you, or an End User, and is to be paid by you or the End User, and a **Temporary Assignment** being one where we supply and pay the Candidate who or which is employed or engaged by us and which is subject to the Supply Terms
- G **Requirement** - a request from you in any form for us to Introduce a Candidate or provide any other service
- H **Additional Fee** - any fee agreed between you and us for an Additional Service provided by us, and any Expenses
- I **Additional Service** - any 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), the terms of such service either being set out in an additional Schedule or in an SAA
- J **Expenses** - any agreed expenses to be paid by you
- K **Remuneration** - the projected sum payable by you or an End User for the benefit of the services of a Candidate under an Engagement calculated on an annualised basis together with the value attributable by the Inland Revenue of all taxable benefits, such value in respect of any motor vehicle being not less than £4,000, provided by you or an End User under the Engagement provided that 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 is 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 calculated on an annualised basis
- L **Supply Terms** - the Terms of Business set out in Schedule 1 being the terms relating to the supply by us of temporary Candidates which are applicable only to a Temporary Assignment during the Period of Supply and which do not form part of the terms in Section 1
- M **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
- N **SAA** - a specific additional agreement signed by a director of ours and nominated to be such, which, when effected, forms part of and is incorporated as a variation within these Terms of Business from the date of commencement of such SAA, but so that these Terms of Business shall prevail in the event of any conflict between an SAA and these terms
- O **General Terms** - the terms set out in Section 2 applicable to all Engagements
- P **Regulations** - the Conduct of Employment Agencies and Employment Businesses Regulations 2003
- Q **Terms of Business** - these Terms of Business, comprising the agreement between you and us, but excluding the Supply Terms at all times save and to the extent that the Supply Terms are stated to apply

### definitions relating to fees

- R **Fee Periods** are any time (a) during the later of 6 months after (i) an Introduction relating to the Candidate concerned or (ii) the last Assignment of the Candidate concerned, or (b) after an Introduction that you enter into an Engagement where the Introduction was the effective cause of the Engagement
- S **Fee means** (a) the fee you are obliged to pay us in the event of an Engagement not being a supply by us under the Supply Terms – 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 below, save and to the extent that any other scale or terms are stated or agreed by us to apply, (ii) **for an Engagement in any other circumstances**, a fee as if the hire were permanent [but payable pro rata] [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
- T **Payment Terms** are that under an Assignment or for any other Additional Service you shall pay the Fee within 30 days of receipt of our invoice and that in all other cases you shall pay the Fee within 30 days of commencement of the Engagement, the sum due in respect of the Fee being a debt due to us, whether or not we have submitted an invoice. If payment is late you shall pay interest on any overdue sum calculated at the rate of 2% per month
- U **Rebate Sum** is the proportion of the Fee (but not the Additional Fee) we will rebate if all of the Rebate Conditions apply and your employment of a Candidate ends within 10 weeks of commencement of the employment in accordance with the Rebate Scale below
- V **Rebate Conditions** are (i) the Candidate is employed on a permanent contract of service by you pursuant to an Agency Assignment, and (ii) the Candidate has not previously either directly or indirectly been Engaged by you, and (iii) the employment ends within the specified 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 our invoice unless the date employment ends falls within the period to which a 75% rebate is offered, and (vi) you have notified us of the fact of, and date of, termination no later than 3 days after the date the employment ends.

### Fee Scale

0-49,999 = 20% of candidates first year's taxable remuneration.  
50-99,999 = 25% of candidates first year's taxable remuneration.  
100,000+ = 30% of candidates first year's taxable remuneration.

### Rebate Scale

Week = week in which employment ends

Proportion of Fee	Week
(a) 75%	Employment ends 1-4 weeks
(b) 50%	Employment ends 5-8 weeks
(c) 25%	Employment ends 9-12 weeks

### Information to be provided with a Requirement

- 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
- experience and qualifications required for the Candidate
- details of any requirements of law or professional bodies which are required for the work
- confirmation that you have appropriate licences, certificates and/or authorities required by any regulatory authority to undertake the work for which the Candidate is required
- any information which may affect a Candidate's decision to accept the work offered

## Terms of Business

### SECTION 1 PRIMARY TERMS - PERMANENT AND DIRECT CANDIDATES

#### our agreement and capacity

It is agreed that these Terms of Business, which are subject to the definitions above and the General Terms, apply to all dealings between us relating to the business described herein and override any terms proposed by you unless we have agreed such alternate terms in writing. We agree to provide the services described in, and subject to, these Terms of Business and we operate as an Agency (as defined by the Regulations) save as otherwise provided for in clause 4.

#### our obligations

2. We agree

- (a) to use our reasonable endeavours to locate Candidates for you, to make Introductions to enable you to hire Candidates to work for you in accordance with your Requirements
- (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) to provide such Additional Services as may be agreed from time to time
- (d) to issue an invoice to you for the relevant Fee
- (i) 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
- (ii) required in respect of Additional Services at the times and for the amounts agreed for payment, whether advance payment or otherwise, for those services
- (e) where applicable, to make payment to you of the Rebate Sum within 30 days of written notification from you that employment of a Candidate has ended.

#### your obligations

3. You agree to accept our Candidate introduction services subject to these Terms of Business and the General Terms and you acknowledge and agree that

- (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 regulatory 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 set out above, and complete any reasonable questionnaire that we may send to you in that regard
- (ii) prior to an Assignment 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 that any information you provide under clause 3(a) is or 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 and be satisfied with information and confirmations we have provided to you to ensure that the Candidate is suitable for your purposes and you agree in particular
  - (i) regardless of references or information that we 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 work permit or other authority to work for you
- (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 responsibility and your warranties as set out in 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 Periods, but this requirement will not apply in the case of a Candidate last Engaged by you under an Agency Assignment that is permanent unless we have paid to you any Rebate Sum 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 upon our written request provide to us information to enable us to identify the Remuneration for the period of 12 months or pro rata where the Engagement is for a period of less than 12 months, including (without affecting our Fee) terms of any trial period which has been agreed and any period subsequent to the trial period together with details of any renewal or extension of an Engagement or of any new Engagement relating to a Candidate effected within 12 months of an Introduction
- (i) wherever there is an Engagement within the Fee Periods, 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 Fee Period (a) 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)
- (j) 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 the Fee Periods
- (k) 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 such Candidate must occupy alternate accommodation from his/her home in order to take up a position with you.

#### additional provisions

4. 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
  - (i) 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, and
  - (ii) that the terms of the Temporary Assignment during the Period of Supply but not further or otherwise shall be on such terms as are set out in the Supply Terms
- (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
- (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, and the Supply Terms shall be for all purposes a separate agreement that is contained within this document for convenience only
- (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 clause 5 of the Supply Terms (in our capacity as an Employment Business), unless you are entitled to and have served a Transfer Notice in accordance with clause 7 of the Supply Terms
- (e) for the avoidance of doubt, because at all times we are acting as an Agency unless otherwise stated, where any Additional Service comprises a requirement to advertise, whether for permanent or for contract or temporary workers, we may specify in any such advertisement that we are acting in our capacity as an Agency
- (f) we are authorised by you to (i) advertise in any medium we deem appropriate to source Candidates where you have informed us of the details of the proposed Assignment, (ii) act as legal agent on your behalf in relation to the provision of any service, including the entering into of an agreement on your behalf with a Candidate, where you give to us an instruction to that effect.

### SECTION 2 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 An Assignment does not comprise any variation to these Terms of Business
- C Under an Assignment 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
- 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 (i) of the Fee Period there is no implied term that an Introduction be the effective cause of an Engagement
- F 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
- G Where the Assignment is an Agency Assignment you are responsible for payment to the Candidate at all times
- H 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

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any reason and it is agreed that should you be in breach of this provision you shall be liable to us for liquidated damages for each breach in the sum of £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 save for loss arising solely from our breach of the Regulations, 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 these Terms of Business, our liability shall, in any event other than for death or personal injury arising from our own negligence, 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 Assignment in respect of which the claim is made
- L It is agreed that the liability terms and limits set out in clauses 3(e), 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 an SAA, 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 address, fax number or electronic mail address either, respectively, by first class post, or by fax or by electronic mail, and shall be deemed to have been received, in the case of post on the postal date following the date of posting, in the case of fax on the date of transmission, and in the case of electronic mail on the date electronic confirmation of receipt is received by the sender
- Q Save for any SAA 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 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 SCHEDULE 1 SUPPLY TERMS - TERMS RELATING TO THE SUPPLY OF TEMPORARY CONTRACTORS UNDER YOUR CONTROL

1. These Terms, which are subject to the definitions below and definitions A to P inclusive set out in the Principal Agreement (but not any further definitions in the Principal Agreement), and are subject to the General Terms, apply to the supply of Candidates under your control on a Temporary Assignment. They are effective upon commencement of a Temporary Assignment and not further or otherwise, and continue in relation to a Temporary Assignment until terminated in accordance with the provisions herein. 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.

#### definitions and meanings

- A **Principal Agreement** - the document of which this Schedule forms part
- B **These Terms** - the terms set out in this Schedule
- C **Temporary Assignment** - as defined in Definition F of the Principal Agreement and for the purposes of These Terms any reference to the Period of Supply includes the period of an Optional Extension
- D **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

#### definitions relating to fees

- E **Fee means** (i) the amount specified by us as our fee in respect of the Temporary Assignment based upon the total of the cost to us of supplying the Candidate (including statutory payments we make to the Candidate) plus our gross margin charge from time to time which shall not exceed 20% greater than the gross payment we make to the Candidate] the total of which we have agreed with you prior to the start of the Temporary Assignment, (ii) any Additional Fee, and (iii) a Transfer Fee
- F **Transfer Fee means** 20% of Remuneration applicable in the circumstances set out in clauses 5 and 6 of These Terms
- G **Waiver Sum means** 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
- H **Payment Terms are** that unless otherwise agreed in writing under an Assignment you shall pay the Fee within **30 days** of receipt of our invoice, which we may raise at any time, and in any case in the event of late payment you shall pay interest on any overdue sum calculated at the rate of 2% per month.

#### 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 defined by the Regulations) until the Temporary Assignment has ended
- (b) on termination of a Temporary Assignment, however caused, These Terms cease to apply except as provided for in These Terms and without affecting responsibilities that arise during the Period of Supply.

#### our obligations

3. We agree to supply a Candidate to you for the period agreed in the Temporary Assignment subject to the provisions set out in clause 4 of These Terms, 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 for the Fee at the times agreed in the Temporary Assignment or in the case of a Transfer Fee at the relevant time.

#### conditions and your obligations

4. You agree to accept the services subject to These Terms and you acknowledge and agree that the following conditions apply
- (a) the provisions in clauses 3(a) to (i) of the Principal Agreement apply to These Terms 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) you shall as an ongoing obligation throughout a Temporary Assignment
- (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 (i)(a) undertake risk assessments of the activities required to be undertaken by the Candidate and notify 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; (i)(b) not allow the Candidate to undertake any work that is hazardous without first undertaking the assessment and providing the notification referred to in clause 4(c)(i)(a) and ensuring that the work complies with all health and safety procedures and requirements relevant to that work; (i)(c) 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; (i)(d) maintain adequate Employer's and Public Liability Insurance which provides cover for Candidates supplied by us
- (ii) notify us as soon as possible in writing 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 supervising and monitoring performance and compliance with such instructions by the Candidate 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 possible 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
- (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 any of your papers and other materials held by the Candidate upon termination of the Assignment

#### timesheets and records

- (f) 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 cooperate with us in relation to any query
- (g) at the end of each week verify a correct record of hours worked by the Candidate and sign 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 signature on such time sheets or records being conclusive evidence of the acceptance of works undertaken by the Candidate for the relevant period; for the avoidance of doubt your failure to verify or sign a record in accordance with this provision shall amount to a breach of These Terms and you shall not

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be entitled to refuse payment to us on the sole basis of such failure or alleged dissatisfaction with the quality of work – 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) you may request us to replace a Candidate under a Temporary Assignment if you are not satisfied with the Candidate and you have complied with clause 4(c)(ii) and you must allow us to replace the Candidate within 2 working days of such request with another suitable Candidate
- (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 in the Principal Agreement, or for any reason, which need not be reasonable, we form the opinion acting in good faith that you may not meet your obligations under These Terms or an Assignment, or our Candidate in our sole opinion, which need not be reasonable, may no longer be willing, 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 and if you give such notice 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) 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
- (l) if we terminate a Temporary Assignment on the basis set out in clause 4(j) or 4(k) (ii) 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 clauses 7 and 10 of These Terms, if you Engage a Candidate other than through supply by us either directly or through the medium of a third party during or after the Period of Supply, subject to statutory limitations applicable to These Terms, you shall upon entering into such Engagement pay us a Transfer Fee.
- 6. If during the Period of Supply 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 pay a Transfer Fee.
- 7. No Transfer Fee referred to in clause 5 shall be due if, before the end of the Period of Supply, 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 24 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 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 such other terms that 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 the margin element of our Fee 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 clause 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 under the main provisions of These Terms.
- 10. Clause 7 of These Terms shall not apply if the Candidate is an individual and a company that have given us notice in accordance with Regulation 32 (9) of the Regulations, and we inform you of such notice before the Temporary Assignment begins.
- 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 at any time to provide services, 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
- (c) any Engagement of a Candidate other than during the relevant Period of Supply shall be subject to the terms of the Principal Agreement other than this Schedule.