

These Main Client Terms ('Main Terms') together with the Client Services Agreement ('CSA') which we have sent to you separately, comprise the basis upon which we conduct business. A copy of the CSA is available on request. The CSA and Main Terms are referred to throughout as 'Terms of Business' or 'these Terms'.

Please note that the section titles highlighted in yellow are only applicable to those wishing to engage non-permanent workers and therefore do not need to be considered for Perm Only.

We are CLEARWATER PEOPLE SOLUTIONS LIMITED (company registration number 05122910) of East Grinstead House, Wood Street, West Sussex, RH19 1UZ including, for the purposes of these Terms of Business, our branch offices and our subsidiary companies (as defined by s.1159 Companies Act 2006) or associated bodies corporate (as defined by s.256 Companies Act 2006) (throughout 'we', 'us', 'our' and 'ours').

Section 1 - definitions and meanings

Agency Worker Assignment	an agency worker as defined by R.3 of the AWR an Engagement in respect of which details have been negotiated and agreed through us or in respect of which you have kept us informed in advance of commencement, being either a Perm Placement, a Temp Placement or a Temp Supply, and references to Assignment shall include the period of a Temp Placement or Temp Supply NOTE: An Engagement which you do not agree with us in advance is not an Assignment
AWR Candidate	the Agency Workers Regulations 2010 and any related regulations any person, whether presenting as an individual, a contractor, an interim manager, whether self-employed or otherwise, 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
Cessation Event	an event of insolvency within the meaning of the Insolvency Act 1986, the appointment of a receiver or an administrator, notice of intention to appoint an administrator, the making of a winding up order, entering into or proposing to enter into a Company Voluntary Arrangement or similar arrangement or composition with creditors, the passing of a resolution to cease trading or actual cessation of trading
Charge	the amount defined as 'Charge' in the CSA at Fees 2
Comparator Terms	the pay and basic working and employment conditions as set out in R.6 of the AWR that are ordinarily in force within your business and which would have been applicable had the Candidate been engaged directly by you to do the same job on the first day of the Temp Supply
Conduct Regs CSA	the Conduct of Employment Agencies and Employment Businesses Regulations 2003 the specific document headed 'Client Services Agreement' which we have sent to you and which comprises part of the Terms of Business
Day 1 Rights	rights under the AWR which a hirer must apply to an Agency Worker from the first day of an assignment, under R.12 (right to shared facilities) and under R.13 (right to be informed of relevant job opportunities in the same way as directly recruited comparable workers)
Data Laws	the EU Regulation 2016/679 (General Data Protection Regulation) and any data protection legislation applicable from time to time in the UK and use herein of 'Personal Data', 'Controller', and 'Data Subject' shall have the respective meanings defined therein
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	an engagement, arrangement 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, express or implied, including an Offer, under which a Candidate is due to provide or provides any services for your benefit or for the benefit of, 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, the date of which shall be deemed to be the earlier of the date of an agreement to Engage or the date of commencement of any services under an Engagement, and 'Engage' and 'Engaged' shall have corresponding meaning
Expenses	any expenses you have agreed to pay
Fees	the payment due for the Services and 'Fee' shall have corresponding meaning
Fee Period	the longer of (a) any time after an Introduction where the Introduction was the effective cause of the Engagement, or (b) the default period of 12 months after any of (i) an Introduction relating to the Candidate, (ii) the end of negotiations relating to an Introduced Candidate, (iii) the last day of an Assignment of the Candidate
Fee Scales	as set out in the CSA and references to Fees are references to the Fees described therein
Introducer Introduction	an employment agency as referred to in the Conduct Regulations the provision of information by us or by a Candidate, whether or not such information includes the Candidate's name, that enables you to identify a Candidate or relating to a Candidate already identified, and 'Introduce' and 'Introduced' shall have corresponding meaning
Invoicing Intervals	the intervals at which we normally invoice in respect of a Temp Placement or Temp Supply as specified in the CSA
Off Payroll Rules	the off-payroll tax rules set out in Chapter 10 of ITEPA
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
Main Terms	this document comprising our current terms and conditions
Offer	an offer to engage the Candidate other than for Temp Placement or Temp Supply communicated either by you or us at your request and which is accepted by the Candidate
OPR	the off-payroll tax rules set out in Chapter 10 of Part 2 of ITEPA
OPR Exempt	where the OPR do not apply because you are either a small company or you have no UK connection
Opt Out Notice	a notice of opt out under R.32(9) of the Conduct Regulations
Party	you or us, together referred to as 'Parties'
Payment Terms	the payment terms set out in the CSA or otherwise agreed in writing signed by a director of ours
Perm Placement	an Assignment where the Candidate is Engaged by you or an End User for regular employment, whether on a full or part time basis, not being a Temp Placement or a Temp Supply
Privacy Notice	our privacy notice made pursuant to the Data Laws from time to time
PSC	an intermediary which meets or is treated as meeting the conditions in s.61N(9)-(11) of the Off Payroll Rules
PSC Services	the services provided by a PSC under an Assignment
Remuneration	any payment for the services of the Candidate under an Engagement calculated in accordance with Section 3
Representative Requirement	an individual who is a Candidate representing and working for a PSC in the provision of the PSC Services a request from you in any form (whether oral or otherwise) for our Services
R.5 Rights	the rights an Agency Worker has to the same terms and conditions in force in your business relevant to others doing the same job, as set out in R.5 AWR
SDS	a status determination statement that complies with s.61NA of ITEPA

Services	to locate, introduce and/or supply Candidates for you in accordance with your Requirements from time to time, Assignments and/or any Additional Service
Social Media	any electronic means of processing, viewing, obtaining or exchanging information or communications about persons through use of the internet or web-based technologies/applications, electronic platforms or any telephonic (mobile or otherwise) messaging system
Special Terms	any Special Terms in the CSA
Supplier	an employment business as referred to in the Conduct Regulations
Tax Authority	A relevant authority, body or department responsible for collection of tax, national insurance, social security or any other charges, taxes or fees
Temp Placement	an Assignment where the Candidate is Engaged by you or an End User on a temporary basis, not being a Perm Placement or a Temp Supply
Temp Supply	the temporary supply to you of a Candidate who or which we employ or otherwise engage either directly or indirectly through a third party
Total Cost	the total cost referred to in Fees 2 of the CSA
Transfer Fee	the fee due to us provided for Introductions as referred to in Section 8
Validation Period	the time interval specified in the CSA for validating work activity

Section 2 - general obligations, information and introductions

- 2.0 We agree to use our reasonable endeavours to provide the Services. For the purpose of the Conduct Regs where your Requirement is only for the Temp Supply of a Candidate we shall be acting as a Supplier but for all other Requirements we operate as an Introducer.
- 2.1 You agree to accept our Services and you acknowledge and agree the Conduct Regs and other statutory obligations require us to provide specific information to each Candidate and to other authorities in relation to any Requirement; accordingly, to enable us to comply with our obligations and to help us introduce a suitable candidate you must
- (i) upon issuing a Requirement or as soon as possible thereafter provide the information set out in the Schedule together with answers to any additional questions we may raise, and
 - (ii) prior to an Engagement promptly inform us of any additional information or any change to information already provided
 - (b) in order to achieve a satisfactory outcome, 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, regardless of our statutory obligations, and you agree in particular
 - (i) regardless of any references or information that we may provide, to take up your own references for the Candidate and verify the experience, training and qualifications of the Candidate or other information 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 of the Engagement if you have not already done so
 - (c) where you need authorisation or a licence to be able to engage a Candidate or allow the Candidate to work in the position you seek to fill, your request for us to seek a Candidate shall be deemed to be your confirmation that you have all necessary authorisations and licences unless you inform us otherwise, for example where you are in the process of applying for the required authorisation
- (d) to ensure that all information you provide to us is full and accurate
- (e) to keep us promptly informed of your intentions in relation to an Engagement of a Candidate throughout the Fee Period.
- 2.2 We may Introduce Candidates to you regardless of any specific Requirement and for the avoidance of doubt you may Engage the Candidate for any purpose, job or role regardless of any stated initial intention. In the event that you have not already provided us with information in accordance with this Section, you agree to provide us with that information promptly.
- 2.3 Transparency is important to avoid duplication of effort. Accordingly, you agree to tell us promptly if you are using any Social Media, using a third party to fill positions or you are actively considering an individual introduced from another source or already known to you, for filling a Requirement. In all cases it is your sole responsibility for checking whether a Candidate has been previously introduced by another party and for keeping us informed.
- 2.4 If you are already, at the time we first Introduce a Candidate to you, actively considering the Candidate for Engagement such that you believe that we have no entitlement to a Fee, it is important that you notify us in writing within the notification period specified in the CSA, or, if no period is specified, within 3 working days of the earliest date upon which you are able to identify the Candidate from the information we have provided, together with clear supporting evidence of your active consideration. Please note our fees provisions in Section 4.
- 2.5 Wherever there is an Assignment we shall endeavour to advise you of the details as soon as possible unless, in the case of a Perm Placement, you have concluded negotiations with the Candidate direct. For the avoidance of doubt, whilst we may advise you of the details applicable to the placement of a Candidate, those details are relevant only to record rates agreed for the purposes of our Fee and your use of the Candidate but not further or otherwise.

Section 3 - remuneration

- 3.0 Remuneration referred to in the Fee Scales, for the purposes of our Fee, is calculated as follows:
- (a) subject to clause 3.0(b), the total 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 for one calendar year from the earlier of the proposed or actual commencement of the service, together with the value attributable by HM Revenue & Customs, or for the avoidance of doubt, would be attributed by HM Revenue & Customs were the benefit subject to tax in the UK, of all taxable benefits provided under the Engagement, such value in respect of any motor vehicle being not less than £7,500
 - (b) calculation is on an annualised basis, so that the same payment rate or charge applicable during the period of an Engagement which is projected to be for less than a full calendar year shall be deemed to apply as if the Engagement were to continue for a full year, whether or not the Engagement continues for a full year.
- 3.1 Wherever there is an Engagement, not being a Temp Supply, for which, regardless of the circumstances, we believe (whether reasonably or otherwise) we are due a Fee, you shall within 7 days of our written request provide to us information to enable us to identify the Remuneration and other material terms of an Engagement as we may request. If you do not inform us of the relevant Remuneration within 7 days of our enquiry, or by any later date we raise an invoice, the Remuneration shall be deemed to be an amount calculated on the basis of the higher of the
- (a) rate payable by you under the last previous Assignment, or
 - (b) highest amount or rate indicated by either you or us as payable for the services sought by you, or
 - (c) highest amount achievable in the market place for a person of similar experience to work in the position that has been filled - such amount shall be determined by us based upon appropriate evidence.
- 3.2 For the avoidance of doubt in the case of an Offer that is withdrawn, Remuneration shall be calculated on the projected sum and/or value contained within the Offer.

Section 4 - fees and invoicing generally

- 4.0 You agree to pay our Fees and any Expenses in accordance with the Payment Terms without any deduction, set off or counterclaim, subject only to clauses 6.4 and 6.5.
- 4.1 Our Fees are due and payable by you whenever you use a Candidate, an Offer is made, or we provide an Additional Service in respect of which we have agreed a Fee. For the purposes of these Terms of Business you 'use a Candidate' whenever there is an Engagement within the Fee Period, being where you Engage a Candidate (whether or not as an Assignment), or you introduce (by providing information or otherwise) a Candidate to an End User which enters into an Engagement of the Candidate.
- 4.2 Save as otherwise provided for, Fees for Engagements and Assignments and how they are calculated are set out in the Fee Scales.
- 4.3 In the case of a Temp Placement we may as a concession ("Concession") agree to charge a single fee based on Remuneration calculated on a fixed period ("Fixed Period") of your Engagement of the Candidate instead of a Fee under Fees 2 (margin only) or under Fees 1 (for Perm Placements and Engagements), and in the event of an agreed Concession the following shall apply:
- (a) it is a condition of our agreement to accept the Concession single fee that payment is made in accordance with the Payment Terms, time being of the essence
 - (b) we shall raise a single invoice for the agreed fee relevant to the Fixed Period
 - (c) if there is an extension of the Fixed Period, namely a further period ("Extension") of the Engagement, we shall be entitled to charge a further Fee being, at our sole discretion, either
 - (i) calculated on the same basis as the fee for the Fixed Period, for the period of the Extension
 - (ii) as a margin charge under Fees 2 for the period of the Extension and any subsequent Extensions
 - (iii) a fee calculated under Fees 1 as if the Temp Placement were a Perm Placement at the time the Extension commences
 - (d) clause 4.3(c) shall apply to each Extension in all cases save where we have charged a Fee under Fees 1
 - (e) where we have agreed a fixed fee in accordance with this Section you shall not be entitled to any refund or credit in the event that the Engagement ceases before the end of the agreed fixed period, whether the Fixed Period or an Extension.
- 4.4 No Fee shall be chargeable for an Offer if, prior to commencement of a contract relating to the Offer, 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 wholly unsuitable for the position offered by you.
- 4.5 Fees for any Additional Service will be agreed with you and are payable on delivery of the service or at such other time as may be agreed in writing.
- 4.6 In the absence of your valid notification to us under clause 2.4 coupled with suitable evidence, an Engagement by you shall be deemed to have resulted from and be effectively caused by our Introduction. For the purposes of clarity you have no right to rely on, or to assert, previous knowledge of the Candidate as a reason for non-payment of any Fee save to the extent that where you have provided the notification we may accept that we were not the effective cause of the Engagement.
- 4.7 For the avoidance of doubt where we have Introduced a Candidate your decision to Engage the Candidate based on or resulting from the use of Social Media or another source shall not disentitle us to our Fee
- (a) we are entitled to a Fee for an Introduction regardless of any arrangement for a fee or otherwise that you may have with a third party relating to the same Candidate
 - (b) howsoever you Engage the Candidate regardless of the job description for which the Candidate may be Engaged, whether the position sought to be filled by you has changed, or the role or tasks to be performed or undertaken by the Candidate are different from those provided to us in respect of the Requirement.
- 4.8 An Introduction entitling us to our Fee in the event of your Engagement shall be deemed to exist notwithstanding that you, or a person at your request, may have initially introduced the Candidate to us for the provision of all or part of our Services to you.
- 4.9 We may issue an invoice to you
- (a) for the relevant Fee under each Engagement upon, or as soon as is appropriate after the commencement of the Engagement, at any time after an Offer, or, as the case may be, at the Invoicing Intervals or at any times or intervals specified in these Terms or otherwise agreed for an Additional Service at the time agreed for the service, or in the absence of agreement, upon delivery of the service.
 - (b) Whist it is our normal practice to raise invoices for Temp Placements or Temp Supply at the Invoicing Intervals, times shall not be of the essence, our agreement to invoice shall not be subject to an implied condition that delay amounts to a waiver of any kind, and, for the avoidance of doubt, there shall be no limit save any statutory limit on the time by which we are obliged to raise a valid enforceable invoice.
- 4.10 All Fees are subject to value added tax which shall 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, or in the case of a debt otherwise due and we elect so to choose, the rate applicable on the date of actual payment.
- 4.11 In the case of an Engagement where we are not informed in advance (i.e. there is no Assignment), unless otherwise stated in the CSA Fees are payable within 14 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.
- 4.12 Interest is due on any overdue sum calculated at the rate of 2% per month.

Section 5 - terms applicable to Temp Supply of Candidates and AWR compliance

- 5.0 The provisions of this Section and Sections 6 to 10 apply where we act as a Supplier in relation to Temp Supply.
- 5.1 You agree as an on-going obligation throughout each Assignment to
- (a) ensure that any equipment or vehicles provided by you for use in relation to the Temp Supply are in good order, suitable, safe and compliant with all relevant regulations and safety requirements
 - (b) maintain adequate insurances including, but not limited to, Employer's and Public Liability Insurance which provides cover for Candidates under Assignment
 - (c) ensure that the Candidate is aware of your or any End User's rules and any regulations applicable to external contractors
 - (d) provide such instructions and suitable facilities to the Candidate as are necessary to enable the Candidate to perform services, and to monitor performance and compliance with such instructions to the extent reasonably necessary to ensure your objectives are being achieved, but without conflicting with any other provision in these Terms of Business
 - (e) allow us to suspend the services of the Candidate for the purposes of leave or sickness absence provided that we shall require the Candidate to notify you as soon as practicable of the reason for any absence
 - (f) refrain from discussing 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 or as required by law.

- 5.2 You acknowledge and agree that
- (a) the Candidate is not intended to be nor is, during an Assignment, an employee of yours and that there is no obligation on any party to perform or provide work for any specific period
- (b) you have selected the Candidate due to the Candidate's skill, expertise and experience relevant to the work required under the Assignment and that you shall rely thereon for all purposes.
- 5.3 By reason of clause 5.2(a) you shall 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, the AWR or other specific obligations under these Terms of Business.
- 5.4 By reason of clause 5.2(b) unless the nature of the work specifically requires that you supervise, direct or control the manner in which the Candidate provides services, you shall not and have no right to do so.
- 5.5 Our contract with the Candidate shall include the following obligations:
- (a) to perform the work required under an Assignment in good faith with due care and skill, and not perform any work during the Temp Supply for any third party which is in conflict with your interests
- (b) where appropriate not to make use of your confidential information in terms similar to those set out in clause 11.1
- (c) upon termination of the Temp Supply to deliver up to either you or an End User any documents and other materials of yours or the End User's held by the Candidate.
- 5.6 In relation to health and safety
- (a) in respect of Candidates that are not PSCs or operating through PSCs you shall be responsible for the health and safety of the Candidate as if directly engaged by you, and, without limiting that responsibility in any way, you shall
- (i) ensure that the work complies with all relevant health and safety procedures and requirements
- (ii) before deploying the Candidate and at appropriate times during the Assignment undertake such risk assessments as are necessary to

Section 6 – fees and records for Temp Supply

- 6.0 For the period of supply our Fee will be calculated in accordance with Fees 2 of the Fee Scales, time spent being in accordance with records of time worked and/or services provided by the Candidate and material costs, if any. Whether or not a rate is agreed, we shall be entitled to increase our Fee to account for additional costs of supply incurred as a result of
- (a) compliance with applicable legislation (whether specific to a particular Candidate, or applicable to our business or part of it) including relating, but not limited to, the National Minimum Wage, the AWR, working time, National Insurance contributions, the Apprenticeship levy (under Part 6 of the Finance Act 2016), tax requirements relating to the supply of Candidates including those under Chapter 10 of ITEPA, auto enrolment and statutory pension contributions
- (b) imposition of, or changes to existing, sectoral guidance or conditions with which suppliers to that sector are generally expected to comply.
- 6.1 Nothing in clause 6.0 shall disentitle you from terminating a Temp Supply in the event of an increase of our Fee, but not so that you may avoid payment of an increase for which you are already liable.
- 6.2 You agree at the end of the Validation Period to verify and confirm a correct record of hours worked by the Candidate, or, in the case of project work services chargeable upon deliverables, verify the objectives achieved. Unless we specify otherwise you should use the Candidate's time record or your own, providing the verification to us. We may specify use of a system or suitable forms and/or methodology for verification ("System"), and in that event you agree to use the System for this purpose. You agree that your verification

- ascertain risks and not allow the Candidate to undertake any work that is hazardous without informing the Candidate and us in writing of any specific or potential hazards
- (b) in respect of Candidates that are PSCs or operating through PSCs you shall be responsible for ensuring that any premises, equipment or materials made available for use by the Candidate complies with all relevant health and safety requirements, for carrying out appropriate risk assessments and that you make the Candidate aware of any relevant risks identified and/or procedures required to be followed.
- 5.7 To facilitate compliance with the AWR you agree the following:
- (a) prior to the commencement of a Temp Supply or as soon as is reasonably practicable thereafter you agree to provide us with the AWR information set out in the Schedule so we can check whether a Candidate has previously worked for you and those current terms and conditions that apply as Comparator Terms
- (b) if requested to do so by us answer any additional questions relevant to AWR rights that we may raise
- (c) you are responsible for informing us if the Comparator Terms change at any time
- (d) you acknowledge that we shall be entitled to increase our charge to reflect any increased entitlement of a Candidate resulting from change in the Comparator Terms
- (e) liability under the AWR may attach to either Party in the event that R.5 Rights are not correctly provided; accordingly you recognise that we may rely upon the AWR information you provide and we cannot accept liability in the event of a claim by a Candidate resulting from any inaccuracy in the information provided
- (f) to comply with your obligations under the AWR, including in respect of Day 1 Rights, and R.17 of the AWR
- (g) not to discriminate against a Candidate who is pregnant, has recently given birth or is breast feeding, and in particular take all reasonably practicable steps to make any reasonable adjustments or modifications to remove or reduce the health and safety risk to acceptable levels.

- in accordance with this provision is conclusive evidence of the acceptance of time spent and/or works undertaken by the Candidate for the relevant period.
- 6.3 You agree to keep the records referred to under clause 6.2 until all matters under the Temp Supply are concluded, not being less than 12 months after the end of the Temp Supply.
- 6.4 Without prejudice to clause 6.2, in the event of any query or dispute relating to the hours worked or services delivered which we believe are chargeable, both Parties shall co-operate in good faith with a view to resolving the issue promptly, and each Party shall promptly provide to the other the evidence to support its position.
- 6.5 Where you comply with clause 6.4 and you have first paid to us the amount due for the relevant undisputed time or other element, we agree that you may withhold a disputed amount for a period of 21 days or such longer period as we may agree, to enable the dispute to be resolved without prejudice to our entitlement to interest for late payment or our entitlement to issue an invoice and/or commence proceedings for recovery of our Fee.
- 6.6 For the avoidance of doubt
- (a) your failure to verify or sign a record in accordance with clause 6.2 shall amount to a breach of contract and you shall not be entitled to refuse payment to us on the sole basis of such failure or alleged dissatisfaction with the quality of work
- (b) notwithstanding any dispute, we are entitled to raise an invoice for our Fee, and in the event of failure to make payment we are entitled to and shall rely on the provisions of these Terms of Business, including clause 4.0 and Section 9.

Section 7 – capacity and fees for Temp Supply requirements

- 7.0 Where a Requirement is for an Introduction of a Candidate who may be supplied by us on a Temp Supply
- (a) because you acknowledge that you may at any time employ the Candidate, the Requirement shall be and shall be treated by both Parties as, a requirement for a Perm Placement in respect of which our capacity is as an Introducer until such time as you agree all the terms of the Temp Supply in relation to the Candidate at which time our capacity shall be as Supplier until the end of the Temp Supply
- (b) the fact of termination of a Temp Supply shall constitute a Requirement by you for a further Introduction of the Candidate concerned in our capacity as an Introducer (although there is no obligation upon you to employ or engage the Candidate) and for the avoidance of doubt our capacity as a Supplier shall cease on such termination
- (c) in relation to applicable terms for Fees
- (i) Section 6 applies to Fees for the Temp Supply

- (ii) this Section 7 and Section 8 apply to other Fees and arrangements in place of other Fees related terms with the exception of the Payment Terms.
- 7.1 If there is an Engagement before, during or after a Temp Supply (notwithstanding clauses 8.0 and 8.1) we are entitled to charge whichever is the greater of
- (a) a Fee as an Introducer under the provisions in Section 4, or
- (b) any Transfer Fee which may be due under Section 8 (in our capacity as a Supplier).
- 7.2 For the avoidance of doubt inclusion of this Section 7 within Sections relating to Temp Supply as laid out herein is, for convenience only and does not imply that our capacity is otherwise than as described in this Section 7.
- 7.3 Where it is specifically agreed that our only service to you is for Temp Supply, Sections 7.0 to 7.2 do not apply.

Section 8 – fees on transfer and additional arrangements

- 8.0 This Section 8 applies only where we have Introduced a Candidate to you for the purposes of supply. Clauses 8.4 to 8.8 do not apply where there is an Opt Out Notice in respect of the Candidate.
- 8.1 Where a Candidate we have Introduced to you is Engaged, and the Engagement is not a Temp Supply, you shall pay us a Transfer Fee.
- 8.2 The Transfer Fee shall be calculated
- (a) under Fees 3 where the Engagement is during or after a Temp Supply and within the Transfer Period as defined in clause 8.3
- (b) under Fees 1 where there has been no Temp Supply and the Engagement is within the Fee Period.
- 8.3 The Transfer Period is either
- (a) where there is an Opt Out Notice in respect of the Candidate, the Fee Period, or
- (b) where there is no Opt Out Notice, that 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.
- 8.4 Without prejudice to the provisions of Section 7, no Transfer Fee shall be due if all of the following conditions are complied with:
- (a) you give us written notice that you elect to take the Candidate under a Temp Supply for 12 months or such other period as we may agree ('Supply Period')
- (b) except for a Temp Supply, you have not already Engaged the Candidate at the time the notice in clause 8.4(a) is given to us
- (c) you agree the notice is your unconditional agreement to Engage the Candidate as elected on the terms set out in clause 8.5 ('Optional Supply')
- (d) the Optional Supply continues for the Supply Period without any breaks save for statutory breaks or other breaks similar to those allowed under any immediately preceding Temp Supply of the Candidate except where we are at fault in failing to supply the Candidate
- (e) you comply with the terms of the Optional Supply in all respects and there is no material breach of these Terms of Business by you.
- 8.5 Subject to clause 8.6, the terms of the Optional Supply are
- (a) the same terms as those that applied to the last preceding Temp Supply of the Candidate where applicable, or

- (b) where there has been no preceding Temp Supply of the Candidate, and at your request we are only acting as Supplier not as Introducer at the time of the notice under clause 8.4(a), all the terms herein that apply to a Temp Supply, the Fee being under Fees 2 and the Charge being 25% of Total Cost.
- 8.6 The terms of the Optional Supply may be amended by written agreement and in any event, we shall be entitled to increase our Fee where we are required, either by the Candidate or by statutory requirements, to increase our payment to or relating to the Candidate. The increase in Total Cost to reflect such sum as is required, but we shall not be entitled to increase the amount of the Charge element of the Total Cost.
- 8.7 Where an Optional Supply follows a Temp Supply
- (a) your agreement to any alternative terms or increase in Fee is your unequivocal acceptance that the different terms do not represent terms that are less favourable to you than under the last preceding Temp Supply of the Candidate
- (b) if, despite your agreement in clause 8.7(a), you later maintain that the terms are less favourable to you, the period of supply, which would otherwise have been regarded as an Optional Supply, shall be regarded as a period of new supply and shall be a new Temp Supply to which all the provisions in these Terms of Business, including this Section 8, apply.
- 8.8 For the avoidance of doubt
- (a) we shall not be at fault in failing to supply the Candidate under an Optional Supply 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 or the Optional Supply is terminated due to a material breach of these Terms of Business by you
- (b) if an Optional Supply is ended prematurely for any reason other than our own fault you shall not be entitled to any discount against the Transfer Fee should you then Engage the Candidate other than under an Assignment for which we are due a Fee, and we may at our discretion either issue an invoice for the Transfer Fee or for the balance of Fees due to us as if the Optional Supply had continued for the agreed term
- (c) no Fee for an Introduction or Transfer Fee is due where there has been an Optional Supply which fully complies with the conditions of this Section 8.

Section 9 – suspension and termination of Temp Supply

- 9.0 You may terminate an Assignment by giving notice to us
- (a) of the notice period where a notice period is agreed for termination, or immediately if there is no notice period
- (b) if we become insolvent within the meaning of the Insolvency Act 1986 or have a receiver appointed or an order or resolution is made to wind up or we enter into any arrangement or composition with our creditors or pass a resolution to cease trading or actually cease trading

- (c) if we have agreed to Introduce a suitable alternative Candidate but fail to do so within the agreed period.
- 9.1 Where a notice period is required and notice is given under clause 9.0(a), the Fee for the period of such notice shall be paid by you whether or not you utilise the services of the Candidate for that period.

Client Terms of Business

- 9.2 We may terminate an Assignment upon giving you notice where a notice period is agreed for termination, or immediately if there is no notice period.
- 9.3 We may at our sole discretion suspend or terminate a Temp Supply immediately without liability and without prejudice to any right for relief if
- (a) you are in breach of any of these Terms of Business herein, or, being an Optional Supply, you are in material breach of these Terms of Business
- (b) we form the opinion for any reason, which need not be reasonable, that
- (i) you may not meet your obligations to us or the Candidate, or
- (ii) the Candidate may no longer be willing, able or suitable to undertake work for you; or
- (iii) the continuation of the Temp Supply may be detrimental to you, us or the Candidate, including but not limited to detriment from reputational damage
- (c) the cost of a Temp Supply changes as a result of legislation
- (d) in the case of our supply of a PSC where an SDS is issued that changes the determination of status made under an earlier SDS or, no earlier SDS having been issued, affects the tax treatment of the Candidate.
- (e) you are subject to a Cessation Event and in this event, you acknowledge and agree that the continuation of the Temp Supply will result in undue hardship to us.
- 9.4 In any case of termination under clause 9.3 you agree we are not at fault and you accept that we have taken a prudent commercial step to avoid loss or potential loss.

Section 10 – provisions for special category Candidates

- 10.0 This Section applies to Candidates we supply to you who may operate through an intermediary, including a PSC, and/or are in business on their own account, and/or operate under the HM Revenue and Customs Construction Industry Scheme.
- 10.1 Where it has been agreed that a Candidate we supply will or may be a PSC the following shall apply:
- (a) save where you have provided us with an OPR Exempt statement, you shall promptly and in any event prior to the Assignment provide us with an SDS
- (b) whether before, during or after an Assignment, you shall promptly and as soon as you become aware of the same notify us should you have reason to believe that the conclusion in an SDS may no longer be correct, and, where an Assignment is continuing, providing us with a new SDS
- (c) where you have provided us with an OPR Exempt statement you must inform us immediately if the statement is no longer correct, or if an earlier OPR Exempt statement was not correct
- (d) you agree that we shall be entitled to rely upon an OPR Exempt statement until such time as you inform us otherwise.
- 10.2 You agree that we shall be entitled to rely upon the determination contained in an SDS or a continuing OPR Exempt statement and acknowledge that we may treat payment to the PSC in accordance with that determination or statement as the case may be; accordingly
- (a) should the SDS or an OPR Exempt statement be subject to a challenge or deemed inaccurate or incorrect by a Tax Authority (whether or not the conclusion of the Tax Authority is correct) you shall indemnify us and keep us so indemnified against any claims or demands including costs of dealing with the same made by any government or regulatory body
- (b) should you notify us in accordance with clauses 10.1(b), 10.1(c), or 10.3, or we otherwise have reason to believe that an SDS or OPR Exempt statement may be challenged or incorrect, we shall be entitled to adjust our Fee and our invoices to account for any additional costs of supply we incur or should have incurred as a result and/or we may without liability terminate the Temp Supply.
- 10.3 You agree to inform us immediately if the arrangement under which the PSC is supplied to you is subject to enquiry (whether informal or otherwise) or investigation by a Tax Authority.
- 10.4 In the case of any Candidate to which this Section 10 applies
- (a) subject to clause 10.4(b), save where you have advised us that you or an End User intend to supervise, direct, or control the Candidate neither you nor an End User shall do so
- (b) if, in response to an enquiry from us, you indicate that you do not intend to supervise, direct, or control how the Candidate does the required work, we shall be entitled to rely upon your confirmation to that effect as conclusive but you may at any stage inform us that your intention has changed
- (c) the Candidate or company as the case may be shall be entitled to provide an alternative person to perform the services under the Assignment, provided that you have given your prior written agreement to do so, which you agree not to unreasonably withhold in the case of a suitably qualified individual who meets your criteria
- (d) without affecting the arrangements for supply and payment through us, your status in relation to that individual is as a client or customer of that profession or business undertaking so carried on, and the individual is not an Agency Worker by virtue of R.3(2)(b) of the AWR; accordingly, in these circumstances we agree to inform you of the profession or business undertaking so carried on, and where we do so, subject to clause 10.4(e), clause 5.7 shall not apply
- (e) where we inform you that the individual is carrying on a profession or business undertaking, it will be our reasonable belief from information provided to us by the Candidate that this is the case; accordingly, should you become aware of any circumstances leading to the conclusion that the Candidate is not in fact carrying on a profession or business undertaking, clause 5.7 shall apply and you must inform us immediately and provide us with the information as required therein.
- 10.5 Nothing in this Section 10 shall prevent you or an End User from providing reasonable instructions in relation to the scope and requirements for the work to be done, or for verifying that time has been worked or milestones achieved or requiring adherence to policies applicable to external contractors including but not limited to health, safety or security.
- 10.6 Where we have informed you that the Candidate under an Assignment is a company, provided that the role does not involve working with vulnerable persons as defined by the Conduct Regulations, we will normally have received an Opt Out Notice; accordingly, you acknowledge that in all cases we have received an Opt Out Notice unless we inform you otherwise.

Section 11 - confidentiality and non-solicitation

- 11.0 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 for liquidated damages for each breach in the sum of £10,000 being estimated damages that you agree are reasonable for our loss.
- 11.1 Subject to clause 11.2, no Party shall divulge to any other person, or use for its own benefit, any information capable of being confidential relating to the affairs or business or business methods of the other, or confidential information, received from the 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.
- 11.2 You acknowledge that the information you have provided to us may be disclosed to third parties involved in the provision of the Services

- to you with whom we may deal, including, but not limited to, Candidates.
- 11.3 No Party ('the First Party') shall, for the duration of these Terms of Business or for a period of 12 months following the termination of an Assignment, directly or indirectly solicit or entice into their

employment any person employed by the other party ('the Second Party') with whom the First Party has had any dealings arising from these Terms of Business, without the Second Party's prior written consent.

Section 12 - data protection

- 12.0 Save where expressly agreed otherwise in writing, the capacity of each Party under this agreement shall be that of Data Controller, and each Party shall be responsible for its own compliance with the Data Laws.
- 12.1 The Services we provide may involve the provision by us of Personal Data including information relating to Candidates, our staff or third parties with whom we have dealings in respect of our Services; this Personal Data may include CV's, information relating to suitability, qualifications and experience, work records and absence information, and may in some cases include sensitive Personal Data where we consider it necessary. This information is provided for the purposes of evaluating Candidate suitability, administering placements and compliance with our obligations.
- 12.2 You will hold any Personal Data we provide securely and confidentially and shall not use it or any part of it for any unlawful purpose, nor any purpose unrelated to the provision by us of our Services, and specifically, you shall not
- (a) provide the Personal Data to any person other than the person to whom we have submitted the Personal Data in the first place
- (b) include the Personal Data in any data or subsets of Personal Data nor use it for any marketing, advertising or other promotional purpose.
- 12.3 The information you have provided to us, including Personal Data, may be disclosed to third parties involved in our Introduction of

Candidates to you with whom we may deal, and to Candidates and others with whom we deal, in order to comply with regulatory obligations and to meet our practical and legitimate interest in providing a professional service.

- 12.4 You shall co-operate with us in the event of any request by a Data Subject to enforce any rights under the Data Laws, any complaint, or investigation by the Information Commissioner's Office or any other regulatory body or supervisory authority.
- 12.5 You warrant that
- (a) you will at all times comply with applicable Data Laws in respect of any Personal Data provided by us to you
- (b) you have appropriate technical and organisational measures within your organisation, including but not limited to measures which protect against the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data
- (c) any Personal Data you provide to us will be lawfully obtained, compliant with the Data Laws
- (d) you have drawn the attention of any staff deployed by you to interface with us to our Privacy Notice.
- 12.6 The restrictions within clause 12.2 shall cease to apply to Personal Data processed in relation to a relevant Candidate following your employment of that Candidate

Section 13 – liability

- 13.0 You shall at all times comply with all applicable laws and regulations relevant to your relationship with us or a Candidate, including but not limited to the AWR, the Equality Act 2010 and the Data Laws and you agree that you shall not take any action which would cause us to be in breach of our obligations under any applicable legislation.
- 13.1 By reason of your agreement to clauses 2.1, 5.1 (c) & (d) and 5.2(b) we shall not be liable for any loss or damage arising out of any representation, including any mistake or misrepresentation, made by us in good faith that may have induced you to accept a Candidate and/or an Assignment, or for any breach of contract, negligence or tort of the Candidate.
- 13.2 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 Conduct Regs, the AWR or the Data Laws by any person other than us, which may arise out of these Terms of Business or an Assignment, save to the extent that exclusion of liability is prohibited by law.
- 13.3 Without prejudice to clauses 13.1 and 13.2, other than where liability cannot be limited by law, our liability shall in any event be in respect

of direct losses only, and limited to the amounts as specified in the CSA, or if no such amount is specified, liability shall not exceed £1million and be limited in the case of

- (a) a Perm Placement to the lower of repayment of our Fee, or £10,000
- (b) a Temp Placement to our Fee under Fees 2 for one month
- (c) a Temp Supply to a sum equivalent to the Charge under Fees 2 payable for one month under the relevant Assignment.
- 13.4 You shall indemnify us and keep us fully indemnified against any claims or demands from any person including costs of dealing with the same
- (a) arising from incorrect or incomplete information provided by you to us, including a failure to provide us with any information as requested by us, or required by statute
- (b) arising out of any breach of these Terms of Business
- (c) brought or made by you in relation to any matter under clause 13.1.
- 13.5 You agree to pay our costs reasonably incurred related to recovery of any Fee which is properly due from you but unpaid.
- 13.6 You agree that the liability terms and limits set out herein are reasonable.

Section 14 - other terms

- 14.0 An Engagement during Fee Period (b) 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 correctly notified us in accordance with clause 2.4; accordingly, and for the avoidance of doubt, there is no implied term that an Introduction must be the effective cause of an Engagement during Fee Period (b).
- 14.1 We may at our sole discretion suspend or terminate any of our Services in the event that we form the opinion (which need not be reasonable) that you may not comply with your obligations under these Terms or you are in breach of these Terms. Our entitlement to a Fee and the clauses related thereto survive any termination of our Services.

- 14.2 In respect of a Temp Placement where the Candidate operates as a company, as the Engagement is direct and not a supply by us, you are solely responsible for any compliance with AWR or tax requirements that may apply to your direct relationship with the Candidate.
- 14.3 You are solely responsible for
- (a) paying all Candidates except where we supply a Candidate under a Temp Supply, and
- (b) for complying with all contractual and regulatory matters including health and safety relevant to a Candidate.
- 14.4 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.

- 14.5 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.
- 14.6 Where a Candidate who is not an employee of yours is required to live away from home in order to work for you, you agree to arrange suitable accommodation for the Candidate and pay the travel costs to and from that accommodation, unless we agree otherwise.
- 14.7 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 15 - general terms

- 15.0 Save as otherwise specified, where times are referred to herein such times are of the essence.
- 15.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999 the Candidate has the benefit of clauses 5.1(a) to (d), 5.6, 5.7(f), 14.3 and 14.4, and it is the intention that you should be able to directly enforce against the Candidate the obligations of the Candidate towards you that are contained in the agreement between us and the Candidate. Other than for third party rights specifically conferred in or under these Terms of Business, the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 15.2 You are not entitled to assign these Terms of Business to any other party without our express written authority to do so, but we may assign these Terms of Business upon giving notice to you, and we may assign or subcontract elements of these Terms of Business, including debt, payment or invoicing arrangements without any requirement for formal notice to you.
- 15.3 You agree the terms herein are reasonable.
- 15.4 Nothing herein creates a relationship of legal agency to the extent that either Party is able to enter into any arrangement with any other person on behalf of the other Party.
- 15.5 Any notice under these Terms of Business shall be in writing and sent to the addressee at the last known address by first class post, fax or to a default email address specified by us for the purpose. Where no default email address is specified by us you may not provide notice to us by email. Notice shall be deemed to have been received, in the

- 14.8 For the avoidance of doubt
- (a) subject only to a variation (letter of variation) the provisions and Fees in the CSA apply save that, where a provision conflicts with a provision in the Main Terms, the Main Terms shall prevail
- (b) an Assignment is not a variation to these Terms of Business
- (c) details which we agree should apply to an Assignment vary terms only to the extent specified relevant to that Assignment, have no additional effect and do not apply further or otherwise.

- case of post on the postal delivery date following the date of posting, in the case of fax on the date of transmission, and in the case of email on the date of acknowledgement of receipt.
- 15.6 For the purposes of interpretation
- (a) the definitions and meanings herein apply throughout, headings are for ease of interpretation only
- (b) words importing one gender include all other genders and words importing the singular include the plural and vice versa
- (c) each portion of these Terms defined by punctuation, paragraphs, sections or numbering, is separate, distinct and severable and to give meaning to the intention herein the Court may modify any portion that may otherwise be void; subject thereto, any void portion may be severed and the remaining provisions, including those modified hereunder, shall continue in full force and effect
- (d) reference to a statute regulation or statutory provision shall include reference to any amendments thereto and to any subordinate legislation or modification thereto.
- 15.7 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.8 The laws of England and Wales govern these Terms of Business and the English Courts shall have sole jurisdiction.