

## TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM CONTRACT STAFF (TO BE DIRECTLY ENGAGED BY THE CLIENT)

### 1. DEFINITIONS

1.1. In these Terms the following definitions apply:

<b>“Agency”</b>	Recruiting Healthcare Limited t/a Caring Works registered company no. 12764496 at The Coach House, 5 Mill Street, Derby, DE1 1DY, United Kingdom ( <b>“the Agency”</b> )
<b>“Candidate”</b>	means the person (whether or not previously known to the Client) Introduced by the Agency to the Client for an Engagement including (without limitation) any officer, employee or other representative of the Candidate if the Candidate is a corporate body or partnership (including limited or limited liability partnership) and members of the Agency’s own staff;
<b>“Client”</b>	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is Introduced;
<b>“Engagement”</b>	means the engagement, employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
<b>“Introduction”</b>	means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;
<b>“Introduction Fee”</b>	means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement calculated in accordance with clause 3.3;
<b>“Remuneration”</b>	includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party. Where the Client provides a company car, a notional amount of £5,000 will be added to the salary in order to calculate the Agency’s fee;
<b>“Replacement Candidate”</b>	means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first 8 weeks of the Engagement.
<b>“Refund”</b>	means a sum to be Refunded by the Agency (or to the Client in certain circumstances against a particular invoice at the times and rates described)

**“Terms”** means the terms of business

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

## **2. THE CONTRACT**

- 2.1. These Terms constitute the contract between the Agency and the Client for the supply of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.
- 2.5. It is the Client's responsibility to ensure that only one agency is engaged in respect of the Engagement of a Candidate. The Client must inform the Agency immediately (and in any event prior to 2pm on the next business day) where it receives details of a Candidate from the Agency which it has already received from another agency. If either (i) no such notification is received by the Agency or (ii) the details of a Candidate sent by the Agency were received by the Client prior to the Client receiving the details of the same Candidate from another agency then, in the event of an Engagement, the Client agrees the Agency is entitled to charge an Introduction Fee, in each case notwithstanding that any additional fees may be payable by the Client to any other agency.

## **3. NOTIFICATION AND FEES**

- 3.1. The Client agrees to:
  - 3.1.1. notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
  - 3.1.2. notify the Agency immediately that the offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and
  - 3.1.3. pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.7.
- 3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of six calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).

3.3. The Introduction Fee is payable on Engagement Commencement and is calculated as follows:

Remuneration*	Percentage of Remuneration
Up to £29,999	10%
£30,000 to £44,999	12.5%
£45,000 and above	15%

3.4. Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.

3.5. Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within six calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.

3.6. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

3.7. The Introduction Fee shall be payable within 14 days of the date of the Agency's Invoice which shall be rendered once the Candidate commences the Engagement.

3.8. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.9. If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee of £2,500

#### 4. REFUNDS

4.1. If, after Engagement Commencement, the Engagement is terminated by either the Candidate or the Client before the expiry of 8 weeks from the date of Engagement Commencement, then the Agency will endeavour to find a suitable Replacement Candidate.

4.2. If, after Engagement Commencement, the Engagement is terminated by either the Candidate or the Client before the expiry of 8 weeks from the date of Engagement Commencement and it has been agreed by the Client and the Agency that no Replacement Candidate has been found, then subject to the terms of clause 4.3, the Agency will refund an amount calculated as follows:

Number of weeks between Engagement Commencement and termination	Percentage of Introduction Fee to be refunded
Up to 2 weeks	75%
3 - 4	50%
5 - 6	25%
7 - 8	10%

- 4.3. In order to qualify for the Refund set out in this clause 4:
- 4.3.1. the Engagement cannot have been terminated (or offer of Engagement have been withdrawn) due to the role being made redundant or in connection with any re-organisation or change in strategy of the person Engaging the Candidate
  - 4.3.2. the Candidate did not leave the Engagement as a result of discrimination or other acts against the Candidate
  - 4.3.3. the Client must:
    - (i) notify the Agency in writing of the termination of the Engagement within seven days of termination
    - (ii) provide the Agency exclusivity to search for a suitable Replacement Candidate as contemplated by clause 4.1 for a period of four weeks from the date of receipt by the Agency of the notification. If after such a four week period no suitable Replacement Candidate can be found, then the Client will be eligible for a refund, subject to the remainder of this clause 4.
- 4.4. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 4.5. It is a condition precedent to any Refund being paid by the Agency that the invoice against which a Refund is or will be sought, is paid to the Agency's Factor within the credit terms shown on the invoice; irrespective of any surrounding circumstances.
- 4.6. Irrespective to any proven or claimed right to a Refund, all invoices must be paid within their credit terms to the Agency's factor and there is no right to set off any proven or claimed right to a Refund.
- 4.7. In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.
- 4.8. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 12 calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

## 5. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a **"Third Party Introduction"**. If that Third Party Introduction results in an Engagement of the Candidate by the third party within six months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee in accordance with clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

## 6. SUITABILITY CHECKS

- 6.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
- 6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
  - 6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body; [and]

- 6.1.3. confirm that the Candidate is willing to work in the position [and]
- 6.1.4. obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body].
- 6.2. Notwithstanding clause 6.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
  - 6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;
  - 6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 6.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 6.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3. To enable the Agency to comply with its obligations under 6.1, the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
  - 6.3.1. the type of work that the Candidate would be required to do;
  - 6.3.2. the location and hours of work;
  - 6.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
  - 6.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 6.3.5. the date the Client requires the Candidate to commence the Engagement;
  - 6.3.6. the duration or likely duration of the Engagement;
  - 6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
  - 6.3.8. the intervals of payment of Remuneration; and
  - 6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 6.4. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:
  - 6.4.1. obtain confirmation of the Candidate's identity;
  - 6.4.2. obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and

## 7. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Candidate is confidential and subject to the Data Protection Act 1998 ("DPA") and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the DPA in receiving and processing the data at all times. In addition, information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

## 8. LIABILITY

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

## 9. NOTICES

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

## 10. GENERAL

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

10.2 No third party is intended to have any rights under or in connection with these Terms

## 11. GOVERNING LAW AND JURISDICTION

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

**Print Client Name** \_\_\_\_\_

\_\_\_\_\_  
Date \_\_\_\_\_

***Signed for and on behalf of the Client***

**Print Signatory name** \_\_\_\_\_

**Position in Company** \_\_\_\_\_

**I confirm I am authorised to sign these Terms on behalf of the Client.**