

Client Terms of Business for the Provision of Candidate Services

(Millbank Holdings and its subsidiaries: Priory Design Services Limited, MDA Rail Limited and Forbes HR Limited)

The terms in this document ('Main Client Terms') together with the Client Services Agreement – Supply services EB ('CSA') which we have sent to you (collectively referred to throughout as 'these Terms') comprise the basis upon which we conduct business. A copy of the CSA is available on request. The CSA and Main Client Terms are referred to throughout as 'these Terms'.

We are Millbank Holdings and its subsidiaries (throughout 'we', 'us', 'our' and 'ours') of Millbank House, Northway, Runcorn, Cheshire, WA7 2SX including, for the purposes of these Terms, 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 Guide

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Section 1 - definitions and meanings

Additional Service	an additional specific service, which may be ancillary to or as part of the Services or which may relate to other business, which we provide to you following your request
Agency Worker	an agency worker as defined by R.3 of the AWR
Assignment	the Temp Supply of a Candidate and references to Assignment shall include the period of Temp Supply NOTE: An Engagement which you do not agree with us in advance is not an Assignment
AWR	the Agency Workers Regulations 2010 and any related regulations
Candidate	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, or a Candidate already introduced
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 1
CIS	His Majesty's Revenue and Customs ('HMRC') Construction Industry Scheme
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 Regulations	the Conduct of Employment Agencies and Employment Businesses Regulations 2003



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Connected Person	a person with whom we conduct business, being (a) a subsidiary company (as defined by s.1159 Companies Act 2006) or associated bodies corporate (as defined by s.256 Companies Act 2006) of yours, or (b) a business (whether corporate or unincorporated) (i) which is a member of, director of, or partner in, your company or business, or (ii) of which you are a member, or director or partner, or (iii) for which either you or a representative of yours is authorised by you (whether expressly or impliedly) to undertake work (other than solely in a professional capacity), or (iv) which has a director or shareholder in common with you
CSA	the specific document headed 'Client Services Agreement – Supply services EB' which we have sent to you and which comprises part of these Terms
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	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, 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 in accordance with these Terms 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 9 months, or such other default period (if any) specified in the CSA, 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
Introduction	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 Supply as specified in the CSA
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
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
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 OPR
PSC Services	the services provided by a PSC under an Assignment



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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
R.5 Rights	a request from you in any form (whether oral or otherwise) for our Services
SDS	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
Services	a status determination statement in the form required pursuant to the OPR
Social Media	to locate, introduce and/or supply Candidates for you in accordance with your Requirements from time to time, Assignments and/or any Additional Service
Special Terms	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
Supplier	any Special Terms in the CSA
Tax Authority	an employment business as referred to in the Conduct Regulations
Temp Supply	HMRC or any other relevant authority, body or department responsible for collection of tax, national insurance, social security or any other charges, taxes or fees
Total Cost	the temporary supply to you of a Candidate who or which we employ or we otherwise engage either directly or indirectly through a third party
Transfer Fee	the total cost referred to in Fees 1 of the CSA
Transfer Period	the fee due to us provided for Introductions as referred to in Section 7
Validation Period	the period referred to as the Transfer period in Section 7
	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 Regulations we shall be acting as a Supplier. These Terms apply to any request you make for a Candidate to be supplied on a temporary basis and are separate and distinct from any terms that may apply to any other business.
- 2.1 You agree to accept our Services and you acknowledge and agree
- (a) the Conduct Regulations 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
 - (iii) to explain your requirements to the Candidate promptly on commencement of the Engagement if you have not already done so
 - (c) where an authorisation or a licence is required for a Candidate to be able to legitimately 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



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- information in accordance with this Section 2, 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.

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

- (a) the rate payable by you under the last previous Assignment, or
- (b) the highest amount or rate indicated by either you or us as payable for the services sought by you, or
- (c) the highest amount achievable in the marketplace 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.

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, or we provide an Additional Service in respect of which we have agreed a Fee. For the purposes of these Terms you 'use a Candidate' whenever there is an Engagement within the Fee Period or Transfer Fee Period as the case may be, 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 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.
- 4.4 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.
- 4.5 For the avoidance of doubt
- (a) 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
- (b) we are entitled to a Fee for an Introduction
- (i) regardless of any arrangement for a fee or otherwise that you may have with a third party relating to the same Candidate
- (ii) 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.



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- 4.6 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.
- 4.7 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 or at the Invoicing Intervals or at any times or intervals specified in these Terms or otherwise agreed
- (b) for an Additional Service at the time agreed for the service, or in the absence of agreement, upon delivery of the service.
- 4.8 Whilst it is our normal practice to raise invoices for 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.
- 4.9 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.
- 4.10 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.
- (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 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.
- 5.1 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
- (c) you shall be responsible for the behaviour of other persons utilised by you to the extent such actions may give rise to a claim against us by the Candidate of unlawful treatment, and in the event of a complaint or a claim referred to in this clause, you agree to promptly investigate and take such action as is necessary to stop any unlawful treatment, and/or remove us, and hold us harmless from any claim.
- 5.2 By reason of clause 5.1(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.

Section 5 - Terms Applicable to Temp Supply of Candidates and AWR Compliance

- 5.0 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 and the 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
- 5.3 By reason of clause 5.1(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.
- 5.4 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 10.1
- (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.
- 5.5 In relation to health and safety



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- (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 including with regard to any need for Personal Protective Equipment ('PPE') 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
 - (iii) where there is a need for PPE, save where PPE is agreed to be provided by us, ensure that the Candidate is provided with suitable PPE at no cost to us or the Candidate, that such PPE is maintained in good order and appropriately stored, and that the Candidate receives appropriate instruction and training on the use of the PPE
 - (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.
- 5.6 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 on the grounds of their pregnancy or maternity, 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.

Section 6 – Fees and Records for Temp Supply

- 6.0 For the period of supply our Fee will be calculated in accordance with Fees 1 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 the OPR, 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 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, should you wish to dispute the content or charge included within any invoice raised by us, you shall notify us in writing within 7 days of the date of the invoice, providing full and detailed information as to the basis for the dispute; subject thereto 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. The absence of a notification in accordance with this clause



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- shall be deemed to be your confirmation that the invoice is accurate and due for payment
- 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 based upon such failure
- (b) you are not entitled to withhold payment due to any matter relating to the quality of work by the Candidate
- (c) 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, including clause 4.0 and Section 8.
- (b) except for a Temp Supply, you have not already Engaged the Candidate at the time the notice in clause 7.4(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 7.5 ('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 by you.
- 7.5 Subject to clause 7.6, 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, all the terms herein, the Fee being under Fees 1 and the Charge being 25% of Total Cost.
- 7.6 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.

Section 7 – fees on transfer and additional arrangements

- 7.0 Clauses 7.4 to 7.8 do not apply where there is an Opt Out Notice in respect of the Candidate.
- 7.1 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.
- 7.2 The Transfer Fee shall be calculated in accordance with Fees 2
- (a) where the Engagement is during or after a Temp Supply and within the Transfer Period as defined in clause 7.3
- (b) where there has been no Temp Supply and the Engagement is within the Fee Period.
- 7.3 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 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 8 weeks after the last day of supply.
- 7.4 No Transfer Fee shall be due if all of the following conditions are complied with:
- (a) you give us written notice, stated to be a notice of election under these Terms, that you elect to take the Candidate under a Temp Supply for 12 months or such other period as we may agree ('Supply Period'); for the avoidance of doubt in the absence of the required notice neither an Assignment nor an extension of an existing Assignment shall qualify
- (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 7.7(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, including this Section 7, apply.
- 7.8 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 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



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- (c) 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 no Transfer Fee is due where there has been an Optional Supply which fully complies with the conditions of this Section 7.

Section 8 – Suspension and Termination of Temp Supply

- 8.0 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 have agreed to Introduce a suitable alternative Candidate within an agreed period but fail to do so.
- 8.1 Where a notice period is required and notice is given under clause 8.0(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.
- 8.2 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.
- 8.3 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 provision in these Terms, or, being an Optional Supply, you are in material breach of a provision in these Terms
- (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) where Section 9 applies and you issue an SDS that changes the determination of status made under an earlier SDS or which affects the tax treatment of the Candidate, for example where you have previously provided us with an OPR Exempt statement
- (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.
- 8.4 In the case of termination under clause 8.3 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 9 – Provisions for Special Category Candidates

- 9.0 This Section 9 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 CIS .

- 9.1 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 undertake regular reviews of the conclusion reached in an SDS and promptly and as soon as you become aware of the same notify us should you have reason to believe that the conclusion has changed such that it may no longer be correct, and, where an Assignment is continuing, providing us with a new SDS with details of the date and nature of the change
- (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.
- 9.2 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 9.1(b), 9.1(c), or 9.3, 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.
- 9.3 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.
- 9.4 In the case of any PSC or a Candidate operating under CIS
- (a) unless you have expressly 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, nor have a right to do so
- (b) 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



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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

- (c) 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 9.4(d), clause 5.6 shall not apply
 - (d) 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 5.6 shall apply and you must inform us immediately and provide us with the information as required therein.
- 9.5 Nothing in this Section 9 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.
- 9.6 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 10 - Confidentiality and Non-Solicitation

- 10.0 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.
- 10.1 Subject to clause 10.2, 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.

- 10.2 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.
- 10.3 No Party ('the First Party') shall, for the duration of these Terms 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, without the Second Party's prior written consent.

Section 11 - Data Protection

- 11.0 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.
- 11.1 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. 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. Information and Personal Data so provided is for the purposes of evaluating Candidate suitability, administering placements and compliance with our obligations.
- 11.2 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.
- 11.3 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.
- 11.4 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



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Information Commissioner's Office or any other regulatory body or supervisory authority.

- 11.5 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 any Personal Data you provide to us will be lawfully obtained, compliant with the Data Laws
 - (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.
- 11.6 The restrictions within clause 11.2 shall cease to apply to Personal Data processed in relation to a relevant Candidate following your employment of that Candidate.

Section 12 – Liability

- 12.0 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.
- 12.1 By reason of your agreement to clauses 2.1, 5.0(c), 5.0(d) and 5.1(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.
- 12.2 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 Regulations, the AWR or the Data Laws by any person other than us, which may arise out of these Terms or an Assignment, save to the extent that exclusion of liability is prohibited by law.
- 12.3 Without prejudice to clauses 12.1 and 12.2, 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 to a sum equivalent to the Charge under Fees 1 payable for one month under the relevant Assignment.
- 12.4 You shall indemnify us and keep us fully indemnified against any claims, penalties or demands from any person including costs (including legal 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 a provision in these Terms
 - (c) arising from a claim, allegation or investigation against us by a Candidate, third party or relevant authority in respect of any matter for which you have responsibility under these Terms or any applicable laws
 - (d) brought or made by you in relation to any matter for which we are not liable, pursuant clause 12.1.12.5
- You agree to pay our costs reasonably incurred related to recovery of any Fee which is properly due from you but unpaid.
- 12.6 You agree that the liability terms and limits set out herein are reasonable.

Section 13 - Other Terms

- 13.0 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).
- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 Where a Candidate 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.
- 13.5 We are authorised by you to advertise in any medium we deem appropriate to source Candidates where you have issued a Requirement to us.
- 13.6 For the avoidance of doubt
- (a) subject only to a variation provided for herein the provisions and Fees in the CSA apply save that, where a provision conflicts with a provision in the Main Client Terms, the Main Client Terms shall prevail
 - (b) an Assignment is not a variation to these Terms



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- (c) details which we agree should apply to an Assignment vary terms only to the extent specified for that Assignment, and do not apply further or otherwise.
- 13.7 These Terms comprise the sole and entire agreement between the Parties relating to the business described, supersede any previous terms issued by us, and override any terms proposed by you. You acknowledge that you have not relied on any representations made by us that are not set out in these Terms and you acknowledge and agree the following:
 - (a) these Terms may not be varied except
 - (i) by us in providing you with notice of an updated version of these Main Client Terms, which will be deemed to apply unless you notify us in writing that you do not accept the updated version within 7 days of receipt of the notice
 - (ii) by agreement (whether orally or otherwise) and confirmed in writing by an authorised officer of ours, or by inclusion of Special Terms, or a variation to a CSA issued by an authorised officer of ours
 - (b) any terms provided by you to us and/or included within any request for services shall not apply unless we expressly agree the same in writing signed by an authorised officer of ours and no other action by us shall imply acceptance by us of any such terms
 - (c) no notice of termination by either party shall have any effect other than to end the provision of our services.
- 13.7 It is the Parties understanding that nothing in these Terms or contemplated services shall involve any relevant transfer in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') and accordingly it is agreed that,
 - (a) to the greatest extent allowable by law, the provisions of TUPE are excluded, and
 - (b) to the extent that TUPE may be deemed to apply, you agree to indemnify us and keep us fully indemnified against claims, costs, losses, expenses or liabilities incurred by us including, without limitation, all reasonable legal expenses and other professional fees, arising from any assertion that there has, or will be, a relevant transfer under TUPE in respect of (i) any Candidates employed by us, a transfer being any transfer to you or a third party supplier who is a successor to us, or (ii) any person engaged by you, whether directly or indirectly through a supplier to whom we are a successor, a transfer being any transfer to us

Section 14 - General Terms

- 14.0 Save as otherwise specified, where times are referred to herein such times are of the essence.
- 14.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999 the Candidate has the benefit of clauses 5.0(a) to (d), 5.5, 5.6(f), and 13.2, 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, the Contracts (Rights of Third Parties) Act 1999 is excluded.

- 14.2 You are not entitled to assign these Terms to any other party without our express written authority to do so, but we may assign these Terms upon giving notice to you, and we may assign or subcontract elements of these Terms, including debt, payment or invoicing arrangements without any requirement for formal notice to you.
- 14.3 You agree the terms herein are reasonable.
- 14.4 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.
- 14.5 Any notice under these Terms shall be in writing and sent to the addressee at the last known address by first class post or by email by the sender to the last address provided for communication by the recipient. Notice shall be deemed to have been received, in the case of post on the postal delivery date following the date of posting, and in the case of email on the date email confirmation of delivery or receipt (whichever is the earlier) is received by the sender.
- 14.6 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.
- 14.7 No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver, 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.
- 14.8 The laws of England and Wales govern these Terms and the English Courts shall have sole jurisdiction.



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SCHEDULE

INFORMATION REQUIRED

Information needed for a Requirement – clause 2.1

Sufficient information to enable us to seek a Candidate including

- the position to be filled and date for commencement
- nature of the work and/or position required
- working conditions and location
- proposed salary, budget and/or other payment terms
- issues relating to health and safety relevant to any Candidate
- minimum experience, certifications and qualifications required for a Candidate to be acceptable for the position
- confirmation that you have all necessary licences and consents required for the proposed work
- any other information which may be relevant to the decision of a candidate to accept the position
- restrictions on type of candidate, in particular if you have policy relating to the engagement of company candidates

AWR information – clause 5.6

Previous work - If the Candidate we supply or propose to supply has previously worked for you, details of any previous work engagement/s where the Candidate's previous engagement ended (a) due to maternity and/or (b) within the previous 6 months, the details in either case including the dates of the engagement, the capacity in which the Candidate was engaged, and the reason for the engagement ending.

Comparator Terms - information to enable us to determine 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 on the first day of their assignment to do the same job.

This information may be provided to us by completing any form we provide.

