

Blueberry Creative Consultants Limited
a company incorporated in England and Wales under company number 04379194
and whose registered office is at 77 Whitehall Park, London, England, N19 3TW ("Employment Business");

Standard Terms of Business

Introduction of Candidates to Clients for Direct Employment/Engagement

1. Definitions

1.1 In these Terms –

"Client" means the person, firm or corporate body to whom the Employment Agency Introduces a Candidate;

"Candidate" means the person Introduced by the Employment Agency to the Client including, but not limited to, any officer or employee of the Candidate if the Candidate is a limited company, any member or employee of the Candidate if the Candidate is a limited liability partnership, and members of the Employment Agency's own staff;

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);

"Data Controller" means –

- (a) "data controller" in the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and
- (b) "controller" in accordance with the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018;

"Data Protection Legislation" means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation, (a) the Data Protection Act 1998; (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;

"Engagement" means the engagement, employment or use of the Candidate by the Client or by any Third Party to whom or to which the Candidate was Introduced by the Client (whether with or without the Employment Agency's knowledge or consent) on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement; or through any other engagement directly or through a limited company of which the Candidate is an officer or employee or through a limited liability partnership of which the Candidate is a member or employee; or indirectly through another company and "Engages" and "Engaged" will be construed accordingly;

"Introduction" means –

- (a) the passing of a curriculum vitae or information about the Candidate; or
 - (b) the interview of a Candidate in person or by telephone or by any other audio or visual means,
- and the time of the Introduction will be taken to be the earlier of (a) and (b) above; and "Introduced" and "Introduces" will be construed accordingly;

"Personal Data" means as set out in, and will be interpreted in accordance with Data Protection Legislation;

"Personal Data Breach" means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with these Terms or which relates to any Candidate;

"Process" means as set out in, and will be interpreted in accordance with Data Protection Legislation and "Processed" and "Processing" will be construed accordingly;

"Remuneration" includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, shift allowances, location weighting and call-out allowances, the benefit of a company car and all other payments or emoluments payable to or receivable by the Candidate for work (or for services where applicable) to be rendered to or on behalf of the Client. Where the Client provides a company car, a notional amount will be added to the salary in order to calculate the Employment Agency's fee;

"Replacement Candidate" 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 4 weeks of the Engagement;

"Terms" means these terms of business;

“Third Party” means any company or person who is not the Client. For the avoidance of doubt, subsidiary and associated companies of the Client (as defined by s.1159 of the Companies Act 2006 and s.416 of the Income and Corporation Taxes Act 1988 respectively) are included (without limitation) within this definition; and

“Vacancy” means a specific role/s, work or position that the Client requests the Employment Agency to submit a person for consideration for such role/s work or position.

2. These Terms

2.1 These Terms constitute the entire agreement between the Employment Agency and the Client in relation to the subject matter hereof and are deemed to be accepted by the Client and to apply by virtue of (a) an Introduction to the Client of a Candidate; or (b) the Engagement by the Client of a Candidate; or (c) the passing of information about the Candidate by the Client to any Third Party; or (d) the Client’s interview or request to interview a Candidate; or (e) the Client’s signature at the end of these Terms; or (f) any other written expressed acceptance of these Terms. For the avoidance of doubt, these Terms apply whether or not the Candidate is Engaged by the Client for the same type of work and/or Vacancy as that for which the Introduction was originally effected.

2.2 These Terms supersede all previous agreements between the parties in relation to the subject matter hereof.

2.3 These Terms prevail over any other terms of business or purchase conditions put forward by the Client save where expressly agreed otherwise by the Employment Agency.

2.4 The Client authorises the Employment Agency to act on its behalf in seeking a person to meet the Client’s requirements and, if the Client so requests, shall advertise for such a person through such methods as are agreed with the Client and at the Client’s expense.

2.5 For the purposes of these Terms, the Employment Agency acts as an employment agency as defined within the Conduct Regulations.

3. Obligations of Employment Agency

3.1 The Employment Agency shall use reasonable endeavours to introduce at least one suitable person to meet the requirements of the Client for each Vacancy. The Employment Agency cannot guarantee to find a suitable person for each Vacancy. Without prejudice to clause 3.2 below, the Employment Agency shall use reasonable endeavours to ascertain that the information provided by the Employment Agency to the Client in respect of the Candidate is accurate.

3.2 The Employment Agency shall use reasonable endeavours to ensure the suitability of Candidates introduced to the Client by taking reasonable steps to;

- a. ensure that it would not be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill;
- b. ensure that both the Client and Candidates are aware of any reasonable requirements imposed by law or by any professional body;
- c. confirm that the Candidate is willing to work in the position; and
- d. 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.

3.3 The Employment Agency accepts no responsibility in respect of matters outside its knowledge and the Client must satisfy itself as to the suitability of the Candidate.

4. Client Obligations

4.1 The Client shall satisfy itself as to the suitability of the Candidate. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, for criminal records and/or background checks and for satisfying other requirements, qualifications or permission required by the law and regulations of the country in which the Candidate is engaged to work.

4.2 To enable the Employment Agency to comply with its obligations under clause 3 the Client undertakes to provide to the Employment Agency details of the position which the Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of work; 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; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks.

4.3 The Client agrees to provide details of the date the Client requires the Candidate to commence work, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with the Client.

4.4 The Client agrees that it shall inform the Employment Agency of any information it has that suggests it would be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill.

4.5 The Client agrees to provide written notice to the Employment Agency within 3 working days where it receives details of a Candidate from the Employment Agency which it has already received from (a) another company; or (b) a person; or (c) the Candidate; or (d) any other source including (without limitation) from social media, job boards or

advertisements placed by the Client. The Client further agrees that if no such notice is given by the Client to the Employment Agency then in the event of an Engagement of the Candidate by the Client, howsoever arising, the Client agrees to pay the Employment Agency a fee in accordance with clause 5.2.

4.6 Where the Client does so notify the Employment Agency in accordance with clause 4.5 above and whereupon the Client provides evidence to the Employment Agency that such receipt of details by the Client is in direct relation to the Vacancy, the Client will not be liable to pay the Employment Agency a fee for that Candidate in respect of the Vacancy. The Client acknowledges and agrees that where the Client is unable to evidence such or freely admits their possession of the Candidate's details was not in relation to the Vacancy, the Client agrees to pay the Employment Agency's fee in accordance with clause 5.2.

4.7 The Client agrees to –

- a. notify the Employment Agency as soon as possible (and in any event, no later than 7 days from the date of offer or from the date the Engagement takes effect; whichever is earlier) of any offer of an Engagement which it makes to the Candidate; and
- b. notify the Employment Agency immediately when its offer of an Engagement to the Candidate has been accepted and to provide details of the Candidate's Remuneration to the Employment Agency; and
- c. pay the Employment Agency's fee within the period set out under clause 6.2.

4.8 The Client shall not, and shall not seek to cause the Employment Agency to, unlawfully discriminate in relation to the services provided by the Employment Agency to the Client in connection with these Terms and shall disclose any and all information requested by the Employment Agency in the event a Candidate makes a complaint to the Employment Agency.

4.9 The Client warrants that it shall not, and shall procure that its employees and agents shall not, pass any information concerning a Candidate to any Third Party. The Client acknowledges that Introductions of Candidates are confidential and that failure to comply with this clause 4.9 may cause the Employment Agency to breach the Conduct Regulations and/or the Data Protection Legislation and accordingly, the Client agrees to indemnify the Employment Agency from any and all liability in connection with the Client's breach of this clause 4.9.

5. Charges/Fees

5.1 Where the Client discloses to a Third Party any details regarding a Candidate and that Third Party subsequently Engages the Candidate within 12 months from the date of the Introduction, the Client agrees to pay the Employment Agency's fee as set out in clause 5.3. There is no entitlement to any rebate or refund to the Client or to the Third Party in relation to fees paid in accordance with this clause 5.1.

5.2 The Client agrees to pay the Employment Agency a fee calculated in accordance with clause 5.3 where it Engages, whether directly or indirectly, any Candidate within 12 months from the date of the Employment Agency's Introduction.

5.3 The fee will be calculated at 20% (percent) of the Candidate's Remuneration applicable during the first 12 months of the Engagement. The Employment Agency will charge VAT on the fee where applicable.

5.4 Where the amount of the actual Remuneration is not known or disclosed, the Employment Agency will charge a fee calculated in accordance with clause 5.3 on the maximum level of remuneration applicable –

- a. for the Vacancy; or
- b. for the type of position the Candidate had been originally submitted by the Employment Agency to the Client for;
or
- c. for a comparable position in the general marketplace.

5.5 Where the Engagement is for a fixed term of less than 12 months, the fee in clause 5.3 will apply pro-rata. Where the Engagement is extended beyond the initial fixed term or where the Client re-Engages the Candidate within 6 months from the date of planned or actual termination (as applicable) of the first Engagement, the Client shall pay a further fee based on the Remuneration applicable for the period of Engagement following the initial fixed term period up to the termination of the second Engagement calculated in accordance with clause 5.3.

5.6 Where the Client withdraws an offer of an Engagement made to the Candidate, the Client agrees to pay the Employment Agency a minimum fee of 2.5% (percent) of the Remuneration for the services provided by the Employment Agency prior to the Client's withdrawal. The Client further agrees to indemnify and hold harmless the Employment Agency from any liability in connection with the Client's withdrawal of such an offer.

5.7 Charges incurred by the Employment Agency at the Client's written request in respect of advertising or any other matters will be charged to the Client in addition to the fee and such charges will be payable whether or not the Candidate is Engaged.

5.8 The Client acknowledges that it has no right to set-off, withhold or deduct monies from sums due to the Employment Agency under or in connection with these Terms.

5.9 In the event that any Employment Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Employment Agency or within 3 months of leaving the Agency, the Client shall be liable to pay the Employment Agency a fee equivalent to the Introduction Fee calculated in accordance with clause 5.3. For the avoidance of doubt, the Client shall not be entitled to a rebate for any fee due under this clause 5.9 in any circumstances.

6. Invoices

6.1 Except in the circumstances set out in clause 5.1, 5.6 and 5.7 no fee is incurred by the Client until the Candidate commences the Engagement; whereupon the Employment Agency will render an invoice to the Client for its fees.

6.2 The Employment Agency shall raise invoices in respect of the charges payable and the Client agrees to pay the amount due within 14 days of the date of the invoice.

6.3 All invoices will be deemed to be accepted in full by the Client in accordance with the payment terms stated within clause 6.2 unless the Client notifies the Employment Agency, in writing within 5 days of receiving the invoice, stating the amount the Client disputes and the reason the Client disputes that amount. In the event the Client does so notify the Employment Agency that it wishes to dispute part of an invoice, the Client agrees to pay the undisputed part of the invoice within the agreed payment terms and shall co-operate fully with the Employment Agency in order to resolve the dispute as quickly as possible.

6.4 The Employment Agency reserves the right to charge interest on invoiced amounts overdue at the statutory rate as prescribed pursuant to Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (as may be calculated using the calculator on the website: www.payontime.co.uk) from the due date until the date payment is received in cleared funds and reserves the right to charge compensation and further recovery costs in accordance with the Late Payment of Commercial Debts Regulations 2013.

7. Rebates

7.1 Where the Client qualifies for a rebate in accordance with clause 7.2, and the employment of the Candidate (a) is terminated by the Client or by the Candidate within the time periods specified below; or (b) does not commence because the Candidate withdraws their acceptance, the Client will be entitled to a rebate of the introduction fee as follows -

Duration of Employment	Percentage of Fee to be rebated
Non Commencement	70%
Less than 4 weeks	60%
4 weeks to less than 8 weeks	40%
8 weeks to less than 12 weeks	20%
12 weeks or more	0%

7.2 The following conditions must be met in order for the Client to qualify for a rebate -

- a) the Client must notify the Employment Agency that the Candidate's employment has ended within 7 days of the employment ending or within 7 days of notice being given to end the employment (whichever is earlier) together with a reason for the premature end of the employment;
- b) the Employment Agency's invoice for the fee must have been paid within the payment terms in accordance with clause 6.2;
- c) the Client has exclusively given the Employment Agency 2 weeks from the date of the notification in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 2 weeks no suitable Replacement Candidate can be found, or if the Replacement Candidate's employment is terminated before the expiry of 12 weeks from the date of commencement of the Replacement Candidate's employment the Client will then be eligible for a rebate, subject to the rest of this clause 7.2;
- d) the Candidate's employment is not terminated by reason of redundancy or re-organisation or change in strategy of the Client;
- e) the Candidate's employment is not terminated by reason of poor performance prior to the completion of any induction or training period;
- f) if the Candidate's employment is terminated by reason of misconduct, rebate is only due where such misconduct was reasonably foreseeable by the Employment Agency;
- g) the Candidate did not leave the employment because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to the Candidate's acceptance of the employment;
- h) the Candidate did not leave the employment as a result of discrimination or other acts against the Candidate; and
- i) the Candidate was not at any time in the 12 months prior to the start of the employment employed or hired (whether on a permanent or contract basis, directly or indirectly) by the Client.

7.3 Where the Client re-engages the Candidate on an employment, worker or indirect (via a Third Party) basis, the Client agrees that any rebate paid to the Client under clause 7.1 in respect of that Candidate, will be immediately repaid to the Employment Agency by the Client.

7.4 There will be no rebate where the Candidate's employment is terminated (or the employment would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 13th week of the employment.

8. Liability and Indemnity

8.1 The Employment Agency shall use reasonable endeavours to ensure the Candidate has the required standard of skill, experience and necessary qualifications as stated in the Vacancy; nevertheless, the Employment Agency is not liable for any loss, expense, damage or delay arising from and in connection with any failure on the part of the Employment Agency or of the Candidate to evidence such to the Client nor for any negligence whether wilful or otherwise, dishonesty, fraud, acts or omissions, misconduct or lack of skill, experience or qualifications of the Candidate.

8.2 The Employment Agency is not liable for any indirect or consequential losses or damage including but not limited to; loss of profits, revenue, goodwill, anticipated savings or for claims by third parties arising out of the Employment Agency's performance or failure to perform any of its obligations in these Terms.

8.3 Notwithstanding clause 8.2 above, nothing in these Terms will be deemed to exclude or restrict any liability of the Employment Agency to the Client for personal injury, death or fraud directly caused by the Employment Agency.

8.4 The Employment Agency shall not be liable for failure to perform its obligations under these Terms if such failure results by reason of any cause beyond its reasonable control.

8.5 The Client will indemnify and keep indemnified the Employment Agency against any costs (including legal costs), claims or liabilities incurred directly or indirectly by the Employment Agency arising out of or in connection with these Terms including (without limitation) as a result of –

- a. any breach of these Terms by the Client or by its employees or agents;
- b. any breach by the Client or by a Third Party, or any of its employees or agents, of any applicable statutory provisions (including, without limitation, any statutory provisions prohibiting or restricting discrimination or other inequality of opportunity, immigration legislation, the Conduct Regulations and Data Protection Legislation); or
- c. any unauthorised disclosure of a Candidate details by the Client or by a Third Party, or any of its employees or agents.

8.5 Save as required by law, the sole aggregate liability of the Employment Agency arising out of or in connection with these Terms is limited to £10,000.00.

9. Termination

9.1 These Terms may be terminated by either party by giving to the other immediate notice in the event that either the Employment Agency or the Client goes into liquidation, becomes bankrupt or enters into an arrangement with creditors or has a receiver or administrator appointed or where the Employment Agency has reasonable grounds to believe the Client will not pay the Employment Agency's invoice within the payment terms agreed within clause 6.2.

9.2 These Terms may be terminated by either party for convenience by serving 3 months notice in writing.

9.3 Without prejudice to any rights accrued prior to termination, the obligations within clauses 1, 4.9, 5, 6, 7.3, 8, 11, 12, 13, 14, 15 and 16 will remain in force beyond the cessation or other termination (howsoever arising) of these Terms.

10. Equal Opportunities

10.1 The Employment Agency is committed to equal opportunities and expects the Client to comply with all anti-discrimination legislation as regards the selection and treatment of Candidates.

11. Confidentiality

11.1 All information contained within these Terms will remain confidential and the Client shall not divulge it to any Third Party save for its own employees and professional advisers and as may be required by law.

11.2 The Client shall not without the prior written consent of the Employment Agency provide any information in respect of a Candidate to any Third Party whether for employment purposes or otherwise.

12. Data Protection

12.1 For the purposes of this clause 12 "Data Subject" means as set out in, and will be interpreted in accordance with Data Protection Legislation. For the avoidance of doubt, Data Subject includes the Candidate.

12.2 The parties hereto acknowledge that the Employment Agency is a Data Controller in respect of the Personal Data of the Candidate and provides such Personal Data to the Client in accordance with the Data Protection Legislation for the purposes anticipated by these Terms.

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

12.4 The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by the Client, the Employment Agency or by the Candidate, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation.

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

12.6 The Client will –

- a. comply with the instruction of the Employment Agency as regards the transfer/sharing of data between the parties hereto. If the Client requires Personal Data not already in its control to be provided by the Employment Agency, the Client will set out their legal basis for the request of such data and accept that the Employment Agency may refuse to share/transfer such Personal Data where, in the reasonable opinion of the Employment Agency, it does not comply with its obligations in accordance with Data Protection Legislation;
- b. not cause the Employment Agency to breach any of their obligations under the Data Protection Legislation.

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

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

- a. investigate and defend any claim or regulatory investigation;
- b. mitigate, remedy and/or rectify such breach; and
- c. prevent future breaches and will provide the Employment Agency with details in writing of all such steps taken.

12.9 The Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of the Employment Agency.

12.10 The Client agrees it will only Process Personal Data of the Candidate for the agreed purpose that is introduction for a Vacancy pursuant to these Terms.

12.11 The Client will provide evidence of compliance with clause 12 upon request from the Employment Agency.

12.12 The Client will indemnify and keep indemnified the Employment Agency against any costs, claims or liabilities incurred directly or indirectly by the Employment Agency arising out of or in connection with any failure to comply with clause 12.

13. General

13.1 Any failure by the Employment Agency to enforce at any particular time any one or more of these Terms will not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.

13.2 Headings contained in these Terms are for reference purposes only and will not affect the intended meanings of the clauses to which they relate.

13.3 No provision of these Terms will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999.

13.4 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of these Terms will remain in full force and effect to the extent permitted by law.

13.5 Any reference to legislation, statute, act or regulation will include any revisions, re-enactments or amendments that may be made from time to time.

14. Notices

14.1 Any notice required to be given under these Terms (including the delivery of any information or invoice) will be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in these Terms (or as otherwise notified from time to time to the sender by the recipient for the purposes of these Terms).

14.2 Notices will be deemed to have been given and served –

- a. if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery; or
- b. if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form; or
- c. if sent by prepaid first class post, 48 hours from the time of posting.

15. Variation

15.1 No variation or alteration of these Terms will be valid unless approved in writing by the Client and the Employment Agency.

16. Applicable Law

16.1 These Terms will be construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.