

STANDARD TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT EMPLOYMENT AND FIXED TERM CONTRACTS (Retained)

THIS AGREEMENT is made on **DATE**

BETWEEN

OAKLEAF PARTNERSHIP LIMITED, a company incorporated in England and Wales (company number 05396257) whose registered office is at 10 Devonshire Square, London, EC2M 4YP (the "Employment Agency")

and

XXX incorporated and registered in England and Wales with company number XXX whose registered office ("Client")

1. Definitions

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 for an Engagement 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, in accordance with the Data Protection Legislation. "**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 and electronic communications, including without limitation, (a) the Data Protection Act 2018 and (b) the UK General Data Protection Regulation (Retained Regulation (EU) 2016/679) (*UK GDPR*); "Employment Agency" means Oakleaf Partnership Limited (the supplier).

"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 bonus and commission earnings, allowances, inducement payments, shift allowances, location weighting, the benefit of a company car and all other payments or emoluments payable to or receivable by the

Candidate for services rendered to or on behalf of the Client. Where the Client provides a company car, a notional amount of £5000 will be added to the salary in order to calculate the Employment Agency's fee;

"Terms" means these Terms of Business as further defined with clause 2;

"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 in this definition.

“Vacancy” means a specific role/s, work or position that Client requests Employment Agency to submit 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, or the Engagement by the Client of, a Candidate or (b) the passing of information about the Candidate by the Client to any Third Party or (c) the Client's interview or request to interview a Candidate or (d) the Client's signature at the end of these Terms or (e) 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 as that for which the Introduction was originally affected.

2.2 The 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.

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

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

3. Obligations of the Employment Agency

3.1 The Employment Agency shall use reasonable endeavours to introduce one or more suitable Candidates to meet the requirements of the Client for any particular vacancy. The Employment Agency cannot guarantee to find a suitable Candidate 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 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, and satisfying

other requirements, qualifications or permission required by law 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 shall 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 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 Employment Agency within 3 working days where it receives details of a Candidate from 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 Client. The Client further agrees that if no such notice is given by Client to Employment Agency then in the event of an Engagement of the Candidate by Client, howsoever arising, Client agrees to pay Employment Agency a fee in accordance with clause 5.2.

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

4.7 The Client agrees to -

- a) notify 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 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 Employment Agency; and
 - c) pay 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 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 Employment Agency to breach the Conduct Regulations and/or the Data Protection Legislation and accordingly, Client agrees to indemnify Employment Agency from any and all liability in connection with 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 shall 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 in accordance with this clause 5.1.

5.2 Client agrees to pay 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 as a percentage of the Candidate's Remuneration applicable during the first 12 months of the Engagement (as set out in the table below). The Employment Agency will charge VAT on the fee where applicable.

Candidate's Remuneration Percentage payable as the Fee

Up to £59,999	25%
£60,000 and above	30%

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 for the position or type of position the Candidate had been originally submitted to the Client for and/or comparable position in the general marketplace.

5.5

5.5.1 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 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.

5.5.2 All fixed term roles (FTC's) shall have a minimum term of 3 calendar months. If the role is for less than 3 months, then either:

a. the total fee due will be the equivalent of a fee for a term of 3 months or;

b. the Employment Agency will accept the role on a contract / day rate basis (separate terms apply).

The Client must stipulate and sign terms according to which option (a or b) prior to the Employment Agency accepting the role and briefing candidates.

5.5.3 Temp to Perm

Where a candidate on a fixed term contract is taken on as permanent, the Employment Agency will charge a fee calculated as a percentage of the candidate's permanent remuneration:

Up to £59,999	25%
£60,000 and above	30%

5.6 Should a candidate get re-employed by the client for a further contract term within 12 months from the end date of the last contract, a further fee in accordance with clause 5.3 shall apply on a pro-rata basis until the Candidate has been engaged for a total period of 12 months.

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 Oakleaf Partnerships standard fee arrangement for retained assignments is set out below:

The total fee payable is calculated as in 5.3 of these terms.

Fees shall be payable as follows:

- a) The Retainer Fee: 34% of the total estimated fee and is invoiced immediately upon commencement of the assignment and is non-refundable; For the avoidance of doubt, the Retainer Fee is fully earned upon instruction and no credit, refund or rebate shall apply to it under any circumstances;

- b) 33% of the total estimated fee is invoiced 30 days after the Employment Agency is instructed to perform the services.
- c) The Completion Fee will be based on the actual gross remuneration of the candidate as outlined above, minus the Retainer Fee and the second Fee. It is payable the day the Candidate accepts the employment with the Client;
- d) If the Client, having retained the Employment Agency for an assignment, hires a non-Employment Agency introduced candidate, a full Completion Fee will be payable;
- e) The client may elect to cancel or suspend the engagement or to change the basis of the engagement during the course of the engagement, for example, by materially modifying the job specification or the profile of the candidate to be recruited. Alternatively, either party may terminate the engagement at any time by serving written notice to the other party. In the event of any change, the Employment Agency and the Client will use their reasonable endeavours to agree a new fee and expense budget, taking into account the materiality of the change. Oakleaf reserves the right to charge a full retainer fee.
- f) In the case of a termination all invoices that have already been issued must be paid and any fees and expenses representing work which has been effectively carried out between the date of the last invoice and the date of receipt of the cancellation letter will be due in addition to any direct expenses which have been committed to.

5.9 International Assignments

Where the hiring Client is non-UK based, fees are payable in GBP and calculated at a pre agreed exchange rate. Where a candidate is recruited to work abroad, the Introduction

Fee or Retainer/Second/Completion Fee are also payable in GBP and calculated at a pre-agreed exchange rate.

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

6 Invoices

6.1

Except in the circumstances set out in clause 5.1, no fee is incurred until the Candidate commences the Engagement, whereupon the Employment Agency shall invoice the Client for the applicable fees.

6.2

Invoices are payable within thirty (30) days of the invoice date.

6.3

All invoices shall be deemed accepted unless the Client notifies the Employment Agency in writing within five (5) days of receipt specifying the disputed amount and reason for dispute. The Client shall pay all undisputed amounts in accordance with clause 6.2.

6.4

The Employment Agency reserves the right to charge interest, compensation and recovery costs on overdue invoices in accordance with applicable late payment legislation.

7. Credit

7.1 Sole Remedy

All fees payable under these Terms, including the Retainer Fee, Second Fee, Completion Fee and any staged payments, are strictly non-refundable and no refund, rebate or other repayment shall be payable in any circumstances.

Subject to this clause 7, the Employment Agency's sole obligation in respect of a Candidate whose Engagement terminates within twelve (12) weeks of commencement shall be, at the Employment Agency's sole and absolute discretion, either:

(a) to use reasonable endeavours to provide a suitable replacement candidate at no additional fee; or

(b) where the Employment Agency, acting reasonably and in its sole and absolute discretion, determines that it is unable to provide a suitable replacement candidate within three (3) months from the termination date, to issue a credit note to the Client to be applied only against a future assignment.

7.2 Credit Structure

Any credit note issued under clause 7.1 shall be calculated as a percentage of the Completion Fee based on the Candidate's length of service as follows:

0–6 weeks: 75%;

7–10 weeks: 50%;

11–12 weeks: 25%;

12+ weeks: 0%.

Any such credit note:

(a) shall apply solely against future assignments and invoices issued by the Employment Agency;

(b) must be used within twelve (12) months of issue;

(c) is personal to the Client and non-transferable; and

(d) is not redeemable for cash and shall not constitute a refund, rebate or reduction of Fees.

7.3 Conditions

Any replacement or credit under this clause 7 is subject to all invoices having been paid in accordance with clause 6.2, the Client notifying the Employment Agency within seven (7) days of the termination date, and the role and requirements remaining materially unchanged. No replacement or credit note shall apply where the termination arises due to redundancy, restructuring, role elimination, any act or omission of the Client, where the Client unreasonably rejects suitable replacement candidates, where the Client withdraws, suspends or materially changes the assignment, where the Candidate is engaged directly or indirectly by the Client, any associated company, affiliate, group company or any third party, or where the Client fails to co-operate reasonably with the Employment Agency in the replacement process.

7.4 Exclusive Remedy

The remedies set out in this clause 7 constitute the Client's sole and exclusive remedy in connection with the termination of a Candidate's Engagement and exclude any entitlement to damages, refunds, rebates, set-off, fee reductions or other compensation.

8 Liability and Indemnity

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

8.2 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 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 Employment Agency to Client for personal injury, death or fraud directly caused by 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 Each party shall indemnify and keep the other indemnified against any costs (including legal costs),

claims or liabilities incurred directly by the other 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 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 Third Party, or any of its employees or agents.

8.6 Save as required by law, the sole aggregate liability of 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 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 shall 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 Client shall not without the prior written consent of the Employment Agency provide any information in respect of the 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

Candidate.

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

12.3. The parties hereto acknowledge that 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 Client, Employment Agency or by 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. Client will -

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

12.10. The Client agrees it will only Process Personal Data of 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 Employment Agency.

12.12. The Client will indemnify and keep Indemnified Employment Agency against any costs, claims or liabilities incurred directly or indirectly by 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 shall 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 shall not affect the intended meanings of the clauses to which they relate.

13.3. No provision of these Terms shall 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 shall remain in full force and effect to the extent permitted by law.

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

13.6 Except as expressly set out in clause 7, the Employment Agency shall have no liability to provide any refund, rebate, reduction in fees, credit, compensation or damages under these Terms.

14 Notices

14.1. Any notice required to be given under these Terms (including the delivery of any information or invoice) shall be delivered by hand, sent by e-mail or prepaid first class post to the recipient at its address or email 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 shall 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 e-mail, and the time of sending if sent on a business day is before 5.00 p.m. or in any other case at 10.00 am on the next business day after the day of sending, unless the recipient informs the sender that the 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 shall be valid unless approved in writing by the Client and the Employment Agency.

16 Applicable Law

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

SIGNED for and on behalf of the Client

Signature: _____

Name (Print):

Title:

For and on behalf of:

Date:

SIGNED for and on behalf of **Oakleaf Partnership Ltd**

Signature: _____

Name (Print):

Title:

For and on behalf of Oakleaf Partnership Ltd

Date: