

## Buchanan Search Limited Terms of Business

### 1 Definitions and interpretation

- 1.1 In these Terms of Business (**Terms**) the following definitions apply:

**Agency** means Buchanan Search Limited whose principal place of business is 20 St Dunstan's Hill, London, EC3R 8HL;

**Applicant** means any person Introduced by the Agency to the Client at any stage after the issue of these Terms for the purposes of being considered for an Engagement including any officer or employee of an Applicant if the Applicant is a limited company (or other legal entity) and members of the Agency's own staff (such as but not limited to employees, workers or contractors);

**Client** means the person, firm or corporate body together with any company in its Group who approaches the Agency with a view to engaging or otherwise employing an individual or to whom an Applicant is introduced by the Agency;

**Engagement** means the engagement, employment, hire or other use directly or indirectly and whether under a contract of service or contract for services or otherwise and on a permanent, temporary or other basis, of an Applicant by or on behalf of the Client and 'Engaged', 'Engaging' and 'Engages' will be interpreted accordingly;

**Group** means in relation to a company, that company, each and any subsidiary or holding company from time to time, and each and any subsidiary from time to time of a holding company of that company;

**Introduction** means (i) the Client's interview of an Applicant in person or by telephone, following the Client's instruction to the Agency to search for a potential Applicant; or (ii) the passing to the Client of a curriculum vitae or information which identifies an Applicant; with a view to the Client Engaging that Applicant and 'Introduced' will be interpreted accordingly;

**Remuneration** means base salary or fees (or any other cash benefits), guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Applicant for services rendered to or on behalf of the Client or any company in its Group;

- 1.2 Unless the context requires otherwise, references to the singular include the plural.

- 1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.

- 1.4 Unless specifically provided to the contrary, when a time period is prescribed in or under these Terms, such time period shall be calculated to start on the day on which such obligation arises or event occurs.

### 2 The Contract

- 2.1 These Terms constitute the contract between the Agency and the Client and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of an Applicant or the passing of any information about an Applicant by the Client to any third party following an Introduction.

- 2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by James Baker of the Agency, these Terms shall prevail over any other terms of business or purchase conditions put forward by the Client.

- 2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency and the Client and are set out in writing.

- 2.4 If any provision or part-provision of the Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Terms.

### 3 Obligations of the Agency

- 3.1 The Agency will endeavour to introduce to the Client a suitable Applicant to carry out work for the Client of such nature as the Client will notify to the Agency when advising the Agency of the position in respect of which an Applicant has been Introduced.

- 3.2 If an Applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will use reasonable endeavours to obtain, and provide to the Client, copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant (provided such persons have consented to references they have provided being disclosed to the Client). If the Agency

is unable to do any of the above, it shall inform the Client of the steps it has taken to obtain this information.

- 3.3 The Client accepts that no warranty as to the suitability of an Applicant can be given by the Agency and that the Agency cannot guarantee to find a suitable Applicant for each vacancy. 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 Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which an Applicant is engaged to work.

#### 4 Obligations of the Client

- 4.1 The Client shall provide to the Agency details of the position which the Client seeks to fill, including the type of work that an Applicant 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 an Applicant 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. In addition, the Client shall provide details of the date the Client requires an Applicant to commence, 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 an Applicant would be entitled to give and receive to terminate the employment with the Client.

- 4.2 The client shall:

- (a) notify the Agency immediately of any offer of an Engagement which it makes to an Applicant;
- (b) notify the Agency immediately that its offer of an Engagement to an Applicant has been accepted or the Engagement has commenced (whichever first occurs) and provide details of the Remuneration to the Agency; and
- (c) pay the Agency's Introduction Fee (defined below) in accordance with clause 5.

- 4.3 The Client shall not either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during the period in which these Terms apply, solicit, induce (including inducing any such members of staff to breach their obligations to the Agency) or entice away or attempt to entice away or authorise the taking of such action by any other person:

- (a) any member of staff of the Agency who has worked on the services provided under these Terms at any time during the period in which these Terms apply; and/or

- (b) any other member of staff employed or engaged by the Agency,

PROVIDED THAT nothing in the foregoing clause shall prevent such members of staff from contacting the Client directly in response to a publicly advertised role.

- 4.4 If any member of staff referenced in clause 4.3(a) or 4.3(b) accepts an Engagement within 6 months of such member of staff leaving the employment of the Agency, the Client will (without prejudice to any other rights of the Agency) be liable to pay the Agency an Introduction Fee as if such member of staff had been introduced by the Agency.

- 4.5 The Client consents to the disclosure by the Agency to Applicants and potential Applicants of information relating to the Client.

#### 5 Notification and Fees

- 5.1 The fee payable to the Agency by the Client for an Introduction resulting in an Engagement (the **Introduction Fee**) will become due immediately upon the commencement of an Engagement. VAT will be payable on Introduction Fees at the prevailing rate if applicable.

- 5.2 The Introduction Fee payable to the Agency by the Client shall be the greater of £4,400 (plus VAT if applicable) and:

- (a) 25% of the Remuneration applicable during the first 12 months of the Engagement.

- 5.3 Where Remuneration cannot be established, the Consultant and the Client shall agree in good faith a likely rate of remuneration having regard to comparable positions in the market generally and the Introduction Fee payable by the Client shall be adjusted accordingly once the Remuneration is established.

- 5.4 The Introduction Fees due under these Terms will be paid by the Client within 21 calendar days of the start date of the Engagement by the Applicant.

- 5.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Agency any sum due under these Terms on the due date, the Agency reserves the right to charge interest on the overdue amount at the rate of 10% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client

shall pay the interest together with the overdue amount.

5.6 The Agency shall have the right to set-off any amounts which may become payable by it to the Client against any amounts that, in the Agency's reasonable assessment, the Client may owe to the Agency.

5.7 All sums payable to the Agency under this Terms:

(a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6 Introductions

6.1 Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant Introduced by the Agency which results in an Engagement of an Applicant by that third party within 6 months of the Introduction renders the Client liable to payment of the Agency's Introduction Fee as set out in clause 5 with no entitlement to any rebate.

6.2 An Introduction Fee calculated in accordance with clause 5 will be charged in relation to any Applicant Engaged as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 6 months from the date of the Introduction.

## 7 Termination and Refunds

7.1 In the event of an Applicant terminating or the Client lawfully terminating an Engagement within 12 Weeks of the date upon which such Applicant commenced work for the Client and provided that:

(a) all moneys due under these Terms have been paid by the Client in accordance with clause 5 of these Terms;

(b) such termination is not as a result of redundancy, injury or ill health or is discriminatory because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation;

(c) the Client has entered into the engagement in good faith and such termination has not arisen as a result of the Client entering into the Engagement with the prior or likely intention of disposing of an Applicant's services or terminating an Applicant's employment without

proper cause or with a view to obtaining a refund otherwise than in good faith;

(d) where requested by the Agency, the Client can prove, to the Agency's satisfaction, that it has acted in accordance with the ACAS Code or any equivalent code or guidelines;

(e) the Client serves notice on the Agency in writing of the termination of the Engagement within 7 calendar days of the termination date; and

(f) neither the Client nor any company in its Group will commence Engagement of the Applicant within 6 months from the date of the termination;

the Client will receive a rebate calculated as a percentage of the Introduction Fee as follows:

Period of Employment	Percentage Rebate
Less than 4 weeks	100%
4 weeks to less than 8 weeks	50%
8 weeks to less than 12 Weeks	25%

7.2 No rebate will be payable by the Agency in the event of failure by the Client to adhere to the time limits provided for in clause 7.1 above.

7.3 The rebate will be repayable in full where the Client subsequently re-Engages the Applicant in any capacity.

## 8 Cancellation Fee

If, after an offer of Engagement has been made to an Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency a cancellation fee of £500.

## 9 Search Projects

From time to time the Client may instruct the Agency to undertake specific search projects (each a **Search Project**). The terms applicable to any Search Project will be set out in a schedule to these Terms (a **Search Project Schedule**). The terms of a Search Project Schedule shall prevail over reciprocal provisions in these Terms, only in relation to the relevant Search Project. In all other circumstances the provisions of these Terms shall prevail.

## 10 Liability and indemnity

10.1 Neither the Agency nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with an Engagement and, in particular, but without limitation to the foregoing, any such loss, injury, damage,

expense or delay arising from or in any way connected with:

- (a) failure of an Applicant to meet the requirements of the Client for all or any of the purposes for which he is required by the Client;
- (b) any act or omission of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and
- (c) any loss, injury, damage, expense or delay incurred or suffered by an Applicant;

PROVIDED THAT nothing in this clause 10 will be construed as purporting to exclude or restrict liability of the Agency to the Client for personal injury or death resulting from negligence (as defined in the Unfair Contract Terms Act 1972) nor any statutory liability or any exclusion or limitation which is prohibited by law.

10.2 In consideration of the Agency entering into an agreement with the Client into which these Terms are incorporated, the Client undertakes to indemnify the Agency in respect of any and all liability of the Agency for:

- (a) any loss, injury, expense or delay suffered or incurred by an Applicant, howsoever caused; and
- (b) any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of an Applicant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;

PROVIDED THAT this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly or indirectly out of or in any way connected with an Engagement.

10.3 If the Agency is in breach of any obligations under these Terms or if any other liability is arising (including liability for negligence or breach of statutory duty) then, subject to clause 10.1, the Agency's aggregate liability to the Client under these Terms shall be limited, for any one event or series of connected events in any period of 12 consecutive months, to the payments made to the Agency by the Client in such 12 month period.

10.4 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Agency set out in these Terms are reasonable and reflected in the fee payable to the Agency under these Terms and will accept risk or insure accordingly.

## 11 Data Protection

11.1 The Client agrees to comply with the Data Protection Act 1988 (the **Act**) and shall not cause or seek to

cause the Agency to breach the Act in connection with these Terms and shall provide any and all information requested by the Agency in a timely manner to assist the Agency in responding to a Data Subject access request (as defined within the Act).

11.2 To the extent that any data or information supplied by or on behalf of the Agency to the Client is personal data within the meaning of the Act or equivalent legislation in the territory:

- (a) the Client will process such data and information only in accordance with the Agency's instructions;
- (b) the Client will not transmit such data and information to a country or territory outside the European Economic Area without the Agency's prior express written consent; and
- (c) the Client will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Agency as data controller.

## 12 Confidentiality

12.1 The Client shall at all times during the continuance of these Terms and after their expiry or termination (howsoever caused):

- (a) keep all information relating to the business or affairs of the Agency (**Confidential Information**) confidential and accordingly not disclose any Confidential Information to any third party; and
- (b) not use any Confidential Information for any purpose other than the performance of its obligations under these Terms.

## 13 Miscellaneous

13.1 Any failure by the 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 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.

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