

CLIENT TERMS OF BUSINESS FOR PERMANENT/FIXED TERM CONTRACT VACANCIES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms the following definitions and rules of interpretation apply:

Agency has the same meaning as given in the Regulations.

Assignment means an Engagement agreed between ISL and the Client where the Candidate is Engaged and paid direct by the Client.

Candidate means any person Introduced to the Client as a work seeker by ISL for the purpose of the Engagement whether employed, self employed or providing their services through a personal service company.

Client means any person, company, firm or corporate body together with any subsidiary or holding company as defined in section 1159 of the Companies Act 2006 and any associated company who:

- (a) approaches ISL with a view to Engaging a Candidate; or
- (b) to whom a Candidate is supplied by ISL.

Confidential Information means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party being confidential to either party including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contracts, including (but not limited to) information that either party creates, develops, receives or obtains in connection with the Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Engage, Engagement or Engaged means the employment or engagement of any description (including as defined by s.13(1) of the Employment Agencies Act 1973) of a Candidate under an Assignment or otherwise whether under a contract of service or contract for service or otherwise on a permanent basis by or on behalf of the Client.

Expenses mean any agreed expenses to be paid by the Client to the Candidate.

Introduce or Introduction means the provision of information to the Client by ISL or the Candidate which identifies the Candidate and leads to the Client Engaging the Candidate.

Introduction Fee means the fee which the Client shall pay to ISL to be calculated in accordance with clause 5.3.

ISL means Incite Solutions Limited (company registration number 06060472) whose registered office is at Midway House, Staverton Technology Park, Herrick Way, Staverton, Cheltenham, Gloucestershire, GL51 6TQ.

Rebate means, subject to clause 7.1, 12.5% of the Introduction Fee for each complete week of the initial 8 week period not worked by the Candidate, or such other percentage as the Parties may agree in writing.

Recruitment Services means the search for Candidates for vacancies that the Client has notified to ISL and Introduction of them to the Client by ISL.

Regulations means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319) as amended by the Conduct of Employment Agencies and Employment Business (Amendment) Regulations 2007 and the Conduct of Employment Agencies and Employment Business (Amendment) Regulations 2010.

Remuneration means base salary, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate. Where a company car is provided by the Client, a notional amount of £5,000 will be added to the Remuneration. Where shares or share options are provided by the Client, a notional amount of £20,000 will be added to the Remuneration.

Requirement means a request from the Client in any form for an Introduction by ISL.

Terms means the terms set out herein, which comprise the agreement between ISL and the Client.

Transfer fee means a fixed fee of £15,000 + VAT.

1.2 The headings in these Terms are inserted for convenience only and shall not affect its construction.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

2. ACCEPTANCE OF TERMS OF BUSINESS

2.1 ISL operates as an Agency unless otherwise specified in these Terms.

2.2 The Client shall be deemed to have accepted and agreed to these Terms when any of the following events occur:

- 2.2.1 the Client requests ISL Introduces a Candidate for any engagement; or
- 2.2.2 the Client, or a third party acting on the Client's behalf, interviews a Candidate; or
- 2.2.3 the Client Introduces a Candidate to any third party; or
- 2.2.4 the Client Engages a Candidate in any capacity; or
- 2.2.5 A Candidate begins work for the Client in any capacity; or
- 2.2.6 ISL provides any of the Recruitment Services to the Client.

3. OBLIGATIONS OF ISL

3.1 ISL shall use its reasonable endeavours to find and Introduce Candidates to the Client suitable to carry out work of such nature as the Client shall notify to ISL and arrange Assignments with the Candidates.

3.2 ISL does not represent, warrant or undertake:

- 3.2.1 to find a suitable Candidate for each vacancy notified to it by the Client; or
- 3.2.2 that each Candidate Introduced to the Client is suitable for the Client's purposes.

4. OBLIGATIONS OF THE CLIENT

4.1 The Regulations require ISL to provide specific information to each Candidate in relation to any Requirement. To enable ISL to comply with its obligations when making a request for the provision of a Candidate to perform an Assignment, the Client shall give ISL details of:

- 4.1.1 the date on which the Client requires the Candidate to commence an Assignment and the duration, or likely duration, of the Assignment;
- 4.1.2 the position which the Client seeks to fill, including the type of work the Candidate in that position would be required to do, the location at which, and the hours during which, the Candidate would be required to work, and any risk to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 4.1.3 the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for the Candidate to possess in order to work in the position;
- 4.1.4 any Expenses payable by or to the Candidate;
- 4.1.5 the fees or rate of Remuneration and any other benefits which the Client would offer to a Candidate in the position which it seeks to fill, and the intervals at which the Candidate would be paid; and
- 4.1.6 the terms of the contract or where applicable, the length of notice which a Candidate in such a position would be required to give, and entitled to receive, to terminate the Engagement or employment with the Client.

4.2 The Client warrants that the information supplied in accordance with clause 4.1 shall be full, clear and accurate.

4.3 The Client shall satisfy itself as to the suitability of any Candidate for the Engagement for which the Candidate has been Introduced. Without prejudice to the generality of the foregoing, the Client acknowledges and agrees that it is the Client's responsibility to:

- 4.3.1 take up and verify references relating to the Candidate's qualifications, skills, character and experience as appropriate;
- 4.3.2 check the validity of the Candidate's qualifications;
- 4.3.3 ensure that the Candidate has any necessary work or other permits required to comply with relevant asylum and immigration legislation from time to time in force; and
- 4.3.4 ensure that the Candidate satisfies any medical requirements or other qualifications that may be appropriate or required by law.

4.4 The Client shall notify ISL immediately on the occurrence of the first of the following events:

- 4.4.1 the Client makes an offer of Engagement to the Candidate;
- 4.4.2 a Candidate accepts an offer of Engagement from the Client; or
- 4.4.3 the commencement of an Engagement by a Candidate.

- 4.5 The Client shall notify ISL immediately in writing if they have previous knowledge of a Candidate prior to an Introduction by ISL and provide supporting documentary evidence to ISL. If the Client fails to notify ISL in accordance with this clause 4.5 then the Client shall waive any right to rely on such previous knowledge as a reason for non payment of any Introduction Fee and the Introduction is deemed to be the effective cause of introduction.
- 4.6 If the Client introduces any Candidate to any third party, whether directly or indirectly and that Introduction results in an Engagement of the Candidate by that third party, the Client shall:
- 4.6.1 Immediately notify the Engagement to ISL; and
- 4.6.2 Pay to ISL an Introduction Fee in accordance with these Terms, unless the Engagement occurs more than 6 months after the Introduction of the Candidate to the Client by ISL or the date of the Candidate's last interview with the Client, whichever is the later.
- 4.7 The Client undertakes not to engage or seek to Engage any member of ISL's staff. If any member of ISL's staff nevertheless accepts an Engagement within 3 months of leaving ISL's employment, the Client shall pay an Introduction Fee to ISL as if that member of staff had been introduced to the Client by ISL in accordance with these Terms.
- 5. FEES**
- 5.1 The Client shall pay an Introduction Fee to ISL in respect of each Candidate Engaged by the Client on an Assignment.
- 5.2 ISL shall issue an invoice for the Introduction Fee upon the commencement of the Engagement by the Candidate or such other date as may be agreed with the Client.
- 5.3 Please call the Office on 0117 4280600 or email your recruitment Consultant for our current Fee structure.
- 5.4 If the Candidate is engaged on a fixed-term contract of less than 12 months or on a part time basis, the Introduction Fee payable shall be calculated on the same basis of what it would have been if the Candidate had been Engaged on a full-time Engagement.
- 5.5 The Client undertakes to notify ISL if either of those events set out in clause 5.4 occurs within 7 days of the occurrence.
- 5.6 Remuneration payable to the Candidate in any currency other than sterling will be calculated at the Bank of England sterling exchange rate applicable on the date of ISL's invoice.
- 5.7 The Client agrees to inform ISL promptly of the amount of Remuneration and in any event no later than 7 days following the Engagement of the Candidate. If the Client fails to inform ISL of the amount of Remuneration, Remuneration shall be deemed to be the maximum level of remuneration payable for the position in which the Candidate has been Engaged having regard to any information supplied to ISL by the Client and/or comparable positions in the market at the time of the Introduction of the relevant Candidate.
- 6. CANCELLATION FEE**
- 6.1 ISL reserves the right to charge the Client a fee in respect of any Candidate to whom an offer of Engagement has been made which the Client has subsequently withdrawn prior to the commencement of the Engagement. The fee shall be 10% of the Remuneration which would have been payable to the Candidate.
- 7. REBATES**
- 7.1 If a Candidate leaves the Client's Engagement within 8 weeks of the commencement of the Engagement for any reason apart from genuine redundancy, ISL shall pay the Rebate to the Client (reducing at 12.5% for every week completed), provided always that:
- 7.1.1 the Client informs ISL in writing of the termination of the Engagement within 7 days of the date of notice of termination or the date on which the Engagement ends (whichever is the earlier);
- 7.1.2 the Client has paid any outstanding invoices due to ISL in accordance with these Terms;
- 7.1.3 the Candidate has not been previously Engaged by the Client.
- 7.2 If the Client re-engages the Candidate within 12 months of the date of termination of the Engagement, ISL reserves the right at its sole discretion to:
- 7.2.1 demand that the Client repay the Rebate; or
- 7.2.2 charge an Introduction Fee to the Client in accordance with these Terms.
- 8. PAYMENT TERMS**
- 8.1 All amounts stated are exclusive of VAT and any other applicable taxes, which will if applicable be charged in addition at the rate in force at the time the Client is required to make payment.
- 8.2 The Client shall pay all invoices in cleared funds no later than 14 days after the date of its issue.
- 8.3 Except as expressly agreed in writing by ISL, all amounts due to ISL shall be paid by the Client to ISL in full without any deduction or withholding (other than as required by law) and the Client shall not be entitled to claim set off or counterclaim against ISL in relation to the payment of the whole or part of such amount.
- 8.4 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms, then ISL shall be entitled:
- 8.4.1 to charge interest on the outstanding amount at the rate of 8% a year above the base lending rate of HSBC Bank plc, accruing daily;
- 8.4.2 to require the Client to pay, in advance, for any Recruitment Services, or any part of the Recruitment Services, which have not yet been performed;
- 8.4.3 not to perform any further Recruitment Services, or any part of the Recruitment Services.
- 9. TRANSFER FEES**
- 9.1 If the Client:
- 9.1.1 Engages a Candidate Introduced by ISL other than through the supply by ISL; or
- 9.1.2 effectively Introduces any Candidate to any third party, whether directly or indirectly, and that Introduction results in an Engagement of the Candidate by that third party, the Client shall:
- (a) immediately notify the Engagement to ISL; and
- (b) pay to ISL a Transfer Fee or a fee based on ISL's standard Fees, whichever is the higher, unless the Engagement occurs more than 6 months after:
- (i) the Introduction of the Candidate to the Client by ISL; or
- (ii) the date of the Candidate's last interview with the Client, whichever is the later.
- 10. TERMINATION**
- 10.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate these Terms, at any time, on written notice to the Other Party.
- (a) if the Other Party is in material breach of its obligations under these Terms and, if the breach is capable of remedy within 14 days, the breach is not remedied within 14 days of the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
- (b) if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative, receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of deb, the notice will take effect as specified in the notice.
- 10.2 On termination of these Terms, the Client will pay for all Recruitment Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Agency for the performance of the Recruitment Services before the date of termination.
- 11. CONFIDENTIAL INFORMATION**
- 11.1 All Introductions are confidential. All work undertaken by ISL for the Client in respect of the Introduction of a Candidate to the Client shall be for the private and confidential use of the Client only and should not be reproduced in whole or in part or relied upon by third parties for any use whatsoever, without the express written authority of ISL.
- 11.2 Each Party ('Receiving Party') shall keep the Confidential Information of the other Party ('Disclosing Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the confidential information of the Disclosing Party for performing the Receiving Party's obligations under these Terms. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 10, and ensure that the Receiving Party's officers, employees and agents meet those obligations.
- 11.3 The obligations of clause 10 shall not apply to any information which:
- 11.3.1 was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Disclosing Party;
- 11.3.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 11.3.3 is provided to the Receiving Party without restriction on disclosure by a third party who did not breach any confidentiality obligations by making such a disclosure;
- 11.3.4 was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Disclosing Party; or

11.3.5 is required to be disclosed by order of a court of competent jurisdiction.

11.4 The obligations of confidentiality set out in this clause 10 shall survive termination of these Terms.

12. LIABILITY

12.1 While ISL shall make reasonable efforts to ensure reasonable standards of skills, integrity and reliability in Candidates and to comply with the Requirement, the Client accepts and agrees that ISL gives no warranty as to the suitability of any Candidate for any Assignment.

12.2 ISL confirms that, in supplying any Candidate to the Client, it is not aware of anything which will cause any detriment to the interests of that Candidate or the Client if the Candidate fulfils the Assignment.

12.3 Neither ISL nor any of its staff shall 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 the Introduction or supply of a Candidate to the Client or with any failure by ISL to introduce or supply a Candidate for all or part of any period booked by the Client (except that in the latter case the Client may be entitled to a reduction or cancellation of the Introduction Fee payable). In particular, but without limiting the generality of the foregoing, ISL shall not be liable for any loss, injury, damage, expense or delay arising from or in any way connected with:

12.3.1 any failure of the Candidate to meet the Client's requirements for all or any of the purposes for which the Candidate is required by the Client; or

12.3.2 any act or omission of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or

12.3.3 any loss, injury, damage, expense or delay suffered by a Candidate.

12.4 Except in the case of death or personal injury caused by ISL's negligence, the total liability of ISL under or in connection with these Terms whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Introduction Fee paid or due to be paid by the Client (as applicable) to ISL under these Terms. ISL shall not be liable for any matter not reported to it within 7 days of its occurrence.

12.5 ISL shall not be liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client of an indirect or consequential nature including without limitation: any economic loss; loss of turnover; loss of profits; loss of business; or loss of goodwill.

12.6 The Client shall indemnify and hold harmless ISL from and against all Claims and Losses arising from loss, damage, liability, injury to ISL, its employees and third parties, by reason of or arising out of:

12.6.1 any loss, injury, expense or delay suffered or incurred by a Candidate, however caused;

12.6.2 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 a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or

12.6.3 any loss, injury or delay suffered or incurred by ISL as a result of any act or omission of the Client,

that arises directly or indirectly out of or is in any way connected with the relevant Assignment, any information supplied by the Client to ISL or the Client's breach of these Terms. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

13. DATA PROTECTION

13.1 The Client warrants that it shall process any personal data supplied by ISL in connection with a Candidate in relation to an Engagement or potential Engagement and that it shall comply with the provisions of the Data Protection Act 1998 in relation to the processing of such data.

13.2 The Client agrees to indemnify and keep indemnified and defend at its own expense ISL against all costs, claims, damage or expenses incurred by ISL or which ISL may become liable due to the failure of the Client to comply with its obligations in accordance with clause 13.1.

14. GENERAL

14.1 **Notices.** All notices in connection with the agreement under these Terms shall be in writing, addressed to the recipient at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, or e-mail. Notices shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second

working day after posting; or, if sent by fax or e-mail, one working day after transmission. This clause 14.1 shall not apply to the service of any proceedings or other documents in any legal action.

14.2 **No Amendments.** Unless otherwise agreed in writing by a director of ISL, these Terms shall prevail over any other terms of business or purchase conditions put forward by the Client. No variation or alteration of these Terms shall be valid unless approved in writing by a director of ISL.

14.3 **Assignment and Sub-Contracting.** The Client shall not without the prior written consent of ISL, assign, transfer, sub-contract, mortgage, charge or deal in any other manner with the agreement made under these Terms or any of its rights and obligations under or arising out of the agreement, or purport to do any of the same.

14.4 **Entire Agreement.** The agreement made under these Terms constitutes the whole agreement between the parties and supersedes all previous agreements, representations or understandings, whether written or oral, between the parties relating to its subject matter. Each party acknowledges that, in entering into the agreement made under these Terms, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms.

14.5 **Force Majeure.** Neither Party shall have any liability under or be deemed to be in breach of these Terms for any delays or failures in performance of these Terms which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate the agreement made under these Terms by written notice to the other Party.

14.6 **Waiver.** No failure or delay by ISL in exercising any right, power or privilege under these Terms shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms are cumulative and not exclusive of any rights and remedies provided by law.

14.7 **Relationship of the Parties.** The agreement made under these Terms shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

14.8 **Severance.** If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms.

14.9 **Contracts (Rights of Third Parties) Act 1999.** For the purposes of the Contracts (Rights of Third Parties) Act 1999 the agreement made under these Terms is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

14.10 **Governing Law and Jurisdiction.** The agreement made under these Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the agreement made under these Terms or its subject matter or formation (including non-contractual disputes or claims).

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