

## Phoenix Resourcing Services (Holdings) Ltd (PRS) and all PRS Group Companies

### TERMS AND CONDITIONS FOR PERMANENT RECRUITMENT

#### 1 **APPLICATION OF THESE TERMS**

- 1.1 All and any business relating to permanent recruitment undertaken by PRS is transacted subject to these Terms, all of which shall be incorporated in any agreement between PRS and the Client. In the event of any conflict between these Terms and any other terms and conditions, these Terms shall prevail unless expressly agreed otherwise in writing by a director or other authorised representative of PRS.
- 1.2 These Terms supersede all previous terms and conditions of business of PRS in respect of the subject matter of these Terms whether written, oral or implied.
- 1.3 **The Client shall be deemed to have agreed and accepted the Terms upon whichever of the following first occurs:**
- 1.3.1 **the Client's signature of these Terms;**
  - 1.3.2 **the Client's providing PRS with a job specification/provision of a job specification to PRS**
  - 1.3.3 **the Client's receipt of a Candidate's CV;**
  - 1.3.4 **the Introduction of a Candidate;**
  - 1.3.5 **the Client Interviewing or Engaging a Candidate; or**
  - 1.3.6 **a Candidate commencing work for or providing services to the Client or to any Third Party as envisaged under Clause 4.1.**

#### 2 **DEFINITIONS AND INTERPRETATION**

- 2.1 Each term starting with a capital letter and not defined elsewhere in these Terms is as defined in Schedule 1 of these Terms.
- 2.2 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.
- 2.3 Where the context permits, words denoting:
- 2.3.1 persons shall include bodies corporate and unincorporated associations of persons;
  - 2.3.2 the singular include the plural and vice versa; and
  - 2.3.3 one gender shall include any gender.
- 2.4 The headings in these Terms are for ease of reference only and shall not affect their interpretation.
- 2.5 Any reference in these Terms to a Clause is, unless otherwise stated, to a Clause of these Terms.

### 3 **INTRODUCTIONS AND CONFIDENTIALITY**

- 3.1 The Client agrees that PRS's Introduction will be the effective cause of any Engagement and the Recruitment Fee will be charged and payable if the Client has:
- 3.1.1 not notified PRS within 48 hours of the relevant Introduction to the Client that the Candidate is already known to the Client and/or has already been introduced to the Client by another employment agency or business and not provided PRS, within such 48 hour period, with satisfactory evidence of the same and with satisfactory evidence that the Candidate was identified to the Client with the Candidate's prior consent (and PRS reserves the right to ask the Candidate whether or not the Candidate gave such consent and the Candidate's response shall be final and binding); or
  - 3.1.2 notified PRS within the period set out in **Clause 3.1.1** that the Candidate is already known to the Client and, within such period, has provided PRS with the satisfactory evidence set out in **Clause 3.1.1**, but the Client does not, within such period, provide PRS with satisfactory evidence that the Client has been in contact with the Candidate regarding relevant vacancies within the 3 months prior to the relevant Introduction.
- 3.2 The Client undertakes to notify PRS immediately of its intention to offer an Engagement to a Candidate and to notify PRS within 3 working days:
- 3.2.1 of any offer of an Engagement which the Client makes to a Candidate at which time the Client shall provide PRS with a copy of the Client's offer letter to the Candidate and full and accurate details of the job title and Annual Remuneration offered; and
  - 3.2.2 upon an offer of Engagement being accepted by a Candidate or otherwise upon the commencement of an Engagement (whichever first occurs) at which time the Client shall provide PRS with confirmation of the job title and details of the Annual Remuneration.
- 3.3 Notwithstanding **Clause 6.1** [and without prejudice to **Clause 7.3** (if applicable)]<sup>1</sup>, the Client:
- 3.3.1 shall satisfy itself as to the suitability of any Candidate for the purposes of the vacancy for which a Candidate has been Introduced;
  - 3.3.2 has sole responsibility for selecting a Candidate for Engagement;
  - 3.3.3 should, PRS recommends, make all offers of Engagement subject to receiving satisfactory references, which the Client should take up directly, and, at the Client's cost, verify to its own satisfaction all statements made by or on behalf of a Candidate, in particular ensuring that any legal, professional body or other requirements relating to (without limitation) training, qualifications, authorisations, professional certification, security vetting clearance, medical requirements and immigration status, are satisfied and that the Candidate holds a current driving licence if required to drive a Client vehicle.
- 3.4 Introductions of Candidates and any CV supplied by PRS to the Client are confidential and should not be disclosed to any other person without the prior written consent of PRS.
- 3.5 The Client may only use any CV supplied for the purposes of selecting a Candidate for Interview and deciding whether to Engage a Candidate. If the Client decides not
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to Engage a Candidate, the Client hereby undertakes to return all copies of the Candidate's CV to PRS and to remove, delete or destroy all records it may have which include details of or from the CV.

#### 4 **FEES**

##### 4.1 If the Client:

4.1.1 Engages a Candidate; or

4.1.2 (whether or not the Client has complied with **Clause 3.4**) Introduces a Candidate to another person, including (without limitation) any subsidiary, associated or holding company of the Client, (a "**Third Party**") resulting in an Engagement by that Third Party

at any time within 6 months from the later of:

4.1.3 the Introduction of a Candidate to the Client by PRS; or

4.1.4 the date of a Candidate's last Interview with the Client,

and regardless of whether the Candidate is Engaged in the same role for which the Candidate was initially Introduced or in a different role, PRS shall be entitled to issue an invoice to the Client as soon as the Engagement commences and the Client shall pay PRS a Recruitment Fee pursuant to **Clause 4.3**.

4.2 If any invoice fails to reach the Client within 10 days of the Candidate's commencement of the Engagement or the Client discovers an error in the invoice, the Client shall notify PRS immediately and PRS will reissue the invoice if the invoice has failed to reach the Client or if PRS agrees that there is an error in the invoice.

4.3 The Recruitment Fee is based upon a Candidate's Annual Remuneration in accordance with the scale of fees set out in Schedule 2 (as may from time to time be amended by PRS) or as may otherwise be agreed by PRS in writing with the Client.

4.4 If the Client at any time requests advertising search and selection, all charges in connection therewith shall be agreed in writing by the Client and a director of PRS prior to any Interview of any Candidate by the Client.

4.5 All monies due under this **Clause 4** shall become due and payable in full (without any deductions, withholding or set-off) by the Client within 30 days of the date the Candidate commenced the Engagement or as may otherwise be agreed by PRS in writing.

4.6 PRS reserves the right to charge the Client interest on any amount outstanding after the period for payment set out in **Clause 4.5** (both before and after any judgment) at the rate of 5% per annum above the base rate of Barclays Bank plc from time to time in force from the due date until the date of payment, and any such interest shall be payable on demand.

4.7 All amounts payable under these Terms are exclusive of value added tax which shall be payable by the Client at the prevailing rate where applicable.

#### 5 **REPLACEMENTS AND REFUNDS**

5.1 If, within ten weeks of the date the Candidate commences the Engagement, the Client or the Candidate gives notice to terminate the Engagement (whether or not the date of termination falls within such ten week period) and provided that:

5.1.1 the Client notifies PRS immediately that the Candidate's Engagement has been terminated and confirms this in writing within 5 days of the date the

Engagement is terminated stating the reason(s) for and the date of termination of the Engagement and requesting a replacement;

- 5.1.2 all monies due under these Terms have been paid in full by the Client in accordance with **Clause 4**;
- 5.1.3 such termination is not as a result of redundancy, reorganisation, transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, injury or ill-health or any unlawful discrimination under the Equality Act 2010 (including, without limitation, any unlawful discrimination by reason of the Candidate's or other relevant person's actual or perceived age, disability, gender reassignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief, sex or sexual orientation);
- 5.1.4 such termination is not by reason of a dismissal classed as an automatic unfair dismissal by virtue of the Employment Rights Act 1996 (including, without limitation, unfair dismissal for: reasons connected with pregnancy, childbirth, or statutory maternity, paternity, adoption, parental leave of time off for dependants; a health and safety reason; or making a protected disclosure) or other employment legislation from time to time in force;
- 5.1.5 the Candidate has not, at any time during the 12 months prior to the date of commencement of the Candidate's Engagement by the Client under these Terms, been supplied to the Client on a temporary assignment via any member of the group of which Phoenix Resourcing Services (Holdings) Limited (company no. 04401459) is the parent company; and
- 5.1.6 such termination has not arisen as a result of the Client entering into the Engagement with the prior or likely intention of disposing with the Candidate's services or terminating the Engagement either without proper cause or with a view to obtaining a replacement or refund unfairly,

PRS will use its reasonable endeavours to find a replacement against the Client's original specification at no extra cost to the Client.

5.2 If:

- 5.2.1 the Client does not notify PRS that it would like a replacement and notifies PRS in writing within 5 days of the date the Engagement is terminated that it would like a refund; or
- 5.2.2 pursuant to **Clause 5.1**, PRS is unable to find a replacement within a timeframe agreed in writing between PRS and the Client or any extension of such timeframe,

PRS will immediately pay the Client a full refund of the Recruitment Fee paid to PRS by the Client. For the avoidance of doubt, PRS will not, under any circumstances, refund or rebate any other prior negotiated and agreed fees, charges or expenses.

- 5.3 No refund shall be paid in respect of an Engagement where a Candidate was previously Engaged in any capacity by the Client through PRS.
- 5.4 If the Client Engages a replacement found by PRS and the Client (or any Third Party) subsequently re-Engages (or Engages) the Candidate for whom PRS found the replacement in any capacity within 12 months of the date of termination of that Candidate's Engagement, the Client shall pay PRS the Recruitment Fee for such subsequent re-Engagement (or Engagement by any Third Party) with no entitlement to a refund or rebate.
- 5.5 If PRS has paid the Client a refund and the Client (or any Third Party) subsequently re-Engages (or Engages) the relevant Candidate in any capacity within 12 months of the date of termination of the Engagement in respect of which the refund was paid,

the Client shall repay forthwith on demand the amount of the refund in full to PRS and shall pay PRS the Recruitment Fee for such subsequent re-Engagement (or Engagement by any Third Party) with no entitlement to a refund or rebate.

## **6 THE COMPANY'S OBLIGATIONS**

- 6.1 PRS will use its reasonable endeavours to Introduce to the Client a suitable Candidate to fill the position which the Client seeks to fill based on the information provided by the Client to PRS on the position, including the type of work a Candidate in that position would be required to do. Whilst PRS will make every effort to maintain a high standard of integrity and an efficient service, PRS gives no warranty as to the suitability of any Candidate.
- 6.2 If, within the period of 3 months from the date of Introduction of the Candidate to the Client, PRS receives or obtains information which indicates that the Candidate is or may be unsuitable for the position in which the Candidate has been Engaged by the Client, PRS shall inform the Client of that information on the same day, or, where that is not reasonably practicable, on the next working day.
- 6.3 Without prejudice to the provisions of **Clause 3.3**, if the Candidate is subject to immigration control for the purposes of the Immigration, Asylum and Nationality Act 2006, PRS confirms that the Candidate (or person) has valid leave to enter the United Kingdom at the date of Introduction [and PRS has directed the Candidate to make available to it the relevant documentation required by PRS to verify the same

## **7 THE CLIENT'S OBLIGATIONS**

- 7.1 The Client warrants and confirms that prior to Introduction it will give to PRS sufficient information in order for PRS to select a suitable Candidate(s) for the position the Client seeks to fill, including but not limited to:
- 7.1.1 the identity of the Client and, if applicable, the nature of the Client's business;
  - 7.1.2 the date on which the Client requires a Candidate to commence work and the duration, or likely duration, of the work;
  - 7.1.3 the position which the Client seeks to fill, including, but not limited to, the type of work a 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, any risks to health or safety known to the Client and the steps the Client has taken to prevent or control such risks;
  - 7.1.4 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;
  - 7.1.5 any expenses payable by or to the Candidate;
  - 7.1.6 the minimum rate of remuneration and any other benefits which the Client would offer to a person in the position which it seeks to fill, and the intervals at which the person would be paid; and
  - 7.1.7 where applicable, the length of notice which the Candidate in such a position would be required to give, and entitled to receive, to terminate the Engagement with the Client.
- 7.2 The Client confirms that prior to Introduction PRS has supplied it with confirmation that the Candidate is willing to work in the position which the Client seeks to fill./of the following

- 7.2.1 the identity of the Candidate;
  - 7.2.2 that the Candidate has the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law or by any professional body, to work in the position which the Client seeks to fill; and
  - 7.2.3 that the Candidate is willing to work in the position which the Client seeks to fill.
- 7.3 Where the Candidate is to be Introduced to the Client with a view to the Candidate taking up a position which involves working with, caring for or attending any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, including any person under the age of 18, the Client confirms that prior to Introduction PRS has:
- 7.3.1 either:
    - 7.3.1.1 offered to provide to the Client copies of any relevant qualifications or authorisations of and obtained from the Candidate;
    - 7.3.1.2 offered to provide to the Client copies of two references obtained from persons who are not relatives of the Candidate and who have agreed that the reference provided may be disclosed to the Client; and
    - 7.3.1.3 taken all other reasonably practicable steps to confirm that the Candidate is suitable for the position concerned;
  - 7.3.2 or, where PRS has taken all reasonably practicable steps to comply with the requirements set out in **Clauses 7.3.1.1, 7.3.1.2 and 7.3.1.3** and has been unable to do so fully, has instead:
    - 7.3.2.1 complied with those requirements to the extent that it was able to do so;
    - 7.3.2.2 informed the Client that it has taken all reasonably practicable steps to comply fully with those requirements and has been unable to do so; and
    - 7.3.2.3 informed the Client of the details of the steps that it has taken in order to try and comply fully with those requirements.

## 8 **LIABILITY**

- 8.1 Neither PRS nor any of PRS's staff shall be liable to the Client for any Losses suffered or incurred by the Client arising in connection with these Terms or any Introduction or Engagement, in particular (but without limitation to the foregoing), any Losses arising in connection with:
- 8.1.1 any failure by PRS to Introduce a Candidate;
  - 8.1.2 the failure of any Candidate to meet the requirements of the Client for all or any of the purposes for which the Candidate is required by the Client;
  - 8.1.3 any act or omission of any Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or
  - 8.1.4 any Losses suffered or incurred by any Candidate;
- provided that nothing in this **Clause 8.1** shall be construed as purporting to exclude or restrict PRS's liability to the Client for personal injury or death resulting from PRS's own negligence nor as otherwise may be prohibited by law.

8.2 The Client acknowledges that in entering into these Terms it has not relied on any representations, warranties or other assurances by PRS other than those expressly set out in these Terms, provided that nothing in this **Clause 8.2** shall operate to limit or exclude any liability for fraudulent misrepresentation between PRS and the Client.

9 **DATA PROTECTION**

9.1 Each party warrants and undertakes to the other that, in relation to these Terms, it shall comply strictly with all requirements of the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data.

9.2 The Client's attention is drawn to the confidentiality and data protection notice printed on the front sheet of the CV.

10 **GENERAL**

10.1 These Terms are personal to the Client and it shall not be entitled to assign or sub-contract its obligations or rights under these Terms to any third party without the prior written consent of PRS (such consent not to be unreasonably withheld or delayed). PRS shall however be entitled to assign or sub-contract its obligations or rights under these Terms to a third party and, upon any such assignment, without prejudice to the assignor's rights in respect of matters arising prior to such assignment, all references to PRS shall be deemed to refer to the assignee.

10.2 Any assignment or sub-contracting of its obligations under these Terms by PRS in accordance with **Clause 10.1** to a third party which is an agency as defined under Regulation 2 of the Conduct Regulations shall be subject to the Client's prior consent (such consent not to be unreasonably withheld or delayed).

10.3 No variation or amendment to these Terms is effective unless it is in writing and signed on behalf of each party by a person duly authorised by that party.

10.4 If any provision or any part of these Terms is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:

10.4.1 such provision or part shall to that extent be deemed not to form part of these Terms but the enforceability of the remainder of these Terms shall not be affected;

10.4.2 to the extent permitted by law, PRS and the Client shall negotiate in good faith a replacement to any provision severed under **Clause 10.4.1** by a provision which is of similar effect but which is not illegal or unenforceable.

10.5 None of the provisions of these Terms is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees who shall be entitled to enforce the provisions of these Terms as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

10.6 These Terms shall be governed by and construed in all respects in accordance with the law in England and Wales and, save as otherwise may be elected by PRS, are governed by the exclusive jurisdiction of the courts of England and Wales.

**SIGNED** by **[insert name]** )  
for and on behalf of **PRS** ) .....  
Director

**SIGNED** by [insert name] )  
for and on behalf of )  
[INSERT CLIENT COMPANY NAME] )

.....  
Director

**Version: January 2013**



## **SCHEDULE 1**

### **DEFINITIONS**

<b>“Annual Remuneration”</b>	the gross annual remuneration of the Candidate Engaged by the Client, including (without limitation) basic salary or fees and a figure for the value of guaranteed and/or anticipated benefits (including the benefit of a company car), inducement payments, bonuses, commission and allowances (including car allowances) and any other payments or Benefits in Kind provided or made available to the Candidate which form part of the total remuneration package for the period of 12 months from the date of commencement of the relevant Candidate's Engagement whether the Candidate remains Engaged by the Client for the full 12 months or not (without limitation to any refund that may become payable pursuant to <b>Clause 5</b> );
<b>“Benefit in Kind”</b>	any benefit offered to the relevant Candidate in addition to salary or fees which is taxable as a benefit in accordance with HM Revenue & Customs rules from time to time in force;
<b>“Candidate”</b>	a person Introduced by PRS to the Client to be considered by the Client for Engagement or any member of PRS's own staff [with whom the Client has had contact in connection with these Terms at any time within the 12 months prior to the date of any offer of Engagement made to such staff member by the Client
<b>“Client”</b>	a person [who approaches PRS with a view to Engaging a Candidate or] <sup>2</sup> to whom a Candidate is Introduced by PRS;
<b>“Conduct Regulations”</b>	The Conduct of Employment Agencies and Employment Businesses Regulations 2003;
<b>“CV”</b>	a Candidate's curriculum vitae and any other details, documentation or information supplied by PRS to the Client relating to a Candidate;
<b>“Engagement”</b>	the employment, engagement or other use, directly or indirectly, of a Candidate on a permanent, temporary or other basis, whether under a contract of service or contract for services, or under an agency, licensee, franchise, partnership agreement or otherwise, and <b>“Engage”</b> , <b>“Engaging”</b> and <b>“Engaged”</b> shall be construed accordingly;

<b>“Interview”</b>	a face to face meeting (in person or by video link) or telephone conversation between the Client and a Candidate, and <b>“Interviewing”</b> and <b>“Interviewed”</b> shall be construed accordingly;
<b>“Introduction”</b>	directly or indirectly introducing a Candidate by way of CV, Interview, meeting or referral, by telephone or otherwise, [following the Client’s instruction to PRS to search for a Candidate,] <sup>3</sup> and <b>“Introduce”</b> , <b>“Introducing”</b> and <b>“Introduced”</b> shall be construed accordingly;
<b>“Losses”</b>	all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business, goodwill or reputation, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;
<b>“PRS”</b>	the member of the group of companies and/or limited liability partnerships of which the parent, or ultimate parent, company is Phoenix Resourcing Services (Holdings) Limited (company no. 04401459) a company incorporated in England and Wales with its registered office at 66 Chiltern Street, London W1U 4JT identified to the Client by the relevant member/the identity and details of which are printed at the foot of these Terms/which is identified [above] as the signatory to these Terms [and details of which are printed at the foot of these Terms
<b>“Recruitment Fee”</b>	the fee payable to PRS by the Client upon any Engagement pursuant to these Terms; and
<b>“Terms”</b>	the terms between PRS and the Client comprising the terms set out in this document including the Schedules.

**SCHEDULE 2**

**SCALE OF FEES**

<b>Annual Remuneration:</b>	<b>Recruitment Fee (as a percentage of Annual Remuneration)</b>
Up to £14,999	12%
From £15,000 up to £19,999	15%
From £20,000 up to £29,999	18%
£30,000 to £34,999	20%
£35,000 and over	25%