

Terms and Conditions of Business for Interim Management

1. Definitions

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

- "**Additional Costs**" shall for example mean any advertising campaign, additional screening requirements or the like for a specific Assignment or any other agreed supplementary charges.
- "**Assignment**" means the services which the Interim Company is engaged by the Employment Business to provide to the Client.
- "**Business Day**" means a day other than a Saturday, Sunday or public holiday, when banks in London are open for business.
- "**Charges**" means the fees to be paid by the Client to the Employment Business calculated in accordance with these Terms or as otherwise agreed between the Parties in writing which comprise the Interim Company's fees, the Employment Business' commission at the agreed rate and any Additional Costs.
- "**Client**" means the person, firm or corporate body; together with any subsidiary or holding company of that company and any other subsidiary of a holding company of that company (as defined by the Companies Act 2006); any associated or connected company (as defined in the Income Tax Act 2007 and the Corporation Tax Act 2010); in each case to whom the services are provided under these Terms and/or to whom the Interim Company is Introduced.
- "**Conduct 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 Businesses (Amendment) Regulations 2007 (*SI 2007/3575*) and 2010 (*SI 2010/1782*)).
- "**CV**" means Curriculum Vitae.
- "**Data Protection Legislation**" means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- "**Engage**" means any engagement, employment or use of the Interim Company's services directly or indirectly (whether for a definite or indefinite period) by the Client other than via the Employment Business and the terms "**Engaged**" or "**Engagement**" shall be construed accordingly.
- "**GDPR**" General Data Protection Regulation (EU) 2016/679.
- "**Interim Company**" means the limited company Introduced to the Client by the Employment Business.
- "**Interim Manager**" means the person supplied by the Interim Company to carry out the Assignment.
- "**Introduction**" means the Client's interview of an Interim Company by whatever means following the Client's instruction to the Employment Business to search for an Interim Company or the passing to the Client of a CV or other information or documentation

which identifies the Interim Company, and “Introduced” and “Introduce” shall be construed accordingly.

- “Parties” means collectively the Employment Business and the Client and each individually shall be referred to as a “Party”.
- “The Employment Business” means Jonathan Lee Contracts Limited, (company number 2796676) whose registered office is The Maltings, Mount Road, Stourbridge, West Midlands, DY8 1HZ.
- “VAT” means Value Added Tax.

1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

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

1.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5. When providing services pursuant to these Terms, the Employment Business is acting as an employment business pursuant to the Conduct Regulations.

2. The Contract

2.1. These Terms set out the agreement between the Parties for the supply of services by the Employment Business to the Client.

2.2. In the absence of written confirmation, the use by the Client of any CV (or the details therein) provided by the Employment Business, or the employment, Assignment or Engagement (or any offer of such) in any capacity, of any Interim Company Introduced by the Employment

Business will constitute acceptance by the Client of these Terms.

3. The Assignment

3.1. When making a request for the provision of an Interim Company for an Assignment, the Client will give the Employment Business details of:

3.1.1. the date on which the Assignment will commence and the duration, or likely duration, of the Assignment;

3.1.2. the position which the Client seeks to fill;

3.1.3. the delivery location;

3.1.4. where the Assignment is to deliver a specific project, project specification and deliverables;

3.1.5. the experience, training, qualifications and any authorisations which the Client considers are necessary, or which are required by law, or by any professional body, for the Interim Company or Interim Manager to possess in order to work in the position;

3.1.6. the applicable rate of pay and intervals of payment;

3.1.7. the period of time required to be given by way of notice to terminate the Assignment;

3.1.8. any expenses payable; and

3.1.9. any other relevant information.

3.2. The Employment Business will use reasonable endeavours to supply an Interim Company to carry out an Assignment but will be under no obligation to do so.

3.3. The Employment Business will respond to a request made by the Client in accordance with clause 3.1 within 5 Business Days. If the Employment Business is willing and able to provide an Interim Company, it will supply the Client with a shortlist of one or more options it considers are likely to be suitable.

3.4. The Client agrees that the Employment Business may advertise each vacancy which the Client issues to the Employment Business by whatever means it sees fit. However, this may be subject to the payment of Additional Costs to be agreed between the Parties.

4. Confirmation of Assignments

4.1. Prior to the commencement of the Assignment or as soon as reasonably practicable upon commencement of the Assignment, the Employment Business will send to the Client confirmation of:

- 4.1.1. the identity of the Interim Company and the Interim Manager;
- 4.1.2. the Charges payable;
- 4.1.3. details of any Additional Costs payable by the Client; and
- 4.1.4. any other relevant information.

5. Charges

- 5.1. The Charges may be varied from time to time by agreement between the Parties.
- 5.2. Any Additional Costs will be settled directly between the Client and the Interim Company unless agreed otherwise in writing by the Parties.
- 5.3. Where applicable, the Employment Business shall charge VAT on its Charges at the prevailing rate.
- 5.4. The Charges will be invoiced to the Client as agreed at the commencement of the Assignment or in default of agreement, weekly and are payable in accordance with the credit terms stated on the applicable invoice.
- 5.5. The Employment Business may vary the intervals at which it renders and sends invoices to the Client at any time during an Assignment where it is reasonably necessary for it to do so.
- 5.6. The Client shall pay the Charges in full without any deduction, set-off or counterclaim.

5.7. If the Client fails to make a payment due to the Employment Business under these Terms by the due date, then the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Royal Bank of Scotland's base rate from time to time, or at a fixed rate of 5% a year for any period during which that base rate is below 0%.

5.8. Where the Client fails to make payment of an invoice on time, the Agency may claim immediate payment of all invoices rendered to the Client and outstanding at the date which that first invoice was due to be paid.

6. Execution of the Services

- 6.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than one week or is completed or finished before the end of a week) the Client shall verify the execution of the services provided by the Interim Company by completion and signature of a form provided to the Interim Company for this purpose.
- 6.2. Verification of the execution of the services by the Client constitutes acceptance that the Interim Company's services have been provided for the days indicated and that such services were satisfactory.
- 6.3. Failure by the Client to verify execution in writing in accordance with clause 6.1 does not release the Client from its obligations to pay the Charges in accordance with clause 5.
- 6.4. The Client and its officers, employees or agents, where authorised, shall have control over the Interim Company as to the aims, objectives and outcomes of the Assignment and shall agree with

the Interim Company the methods for performance of the services.

6.5. The Employment Business shall take reasonable steps to confirm that the Interim Company is suitable for the Assignment. However, where an Interim Company is required by law or any professional body to have any qualifications, authorisations, or certification to work on the Assignment or the Assignment involves working with vulnerable persons, the Client will be responsible for obtaining copies of any relevant qualifications, authorisations, references or other information required.

7. Remuneration

7.1. The Employment Business assumes responsibility for payment of the Interim Company's fees and for deducting any other sums as may be required by law, unless the Interim Company or Interim Manager is Engaged by the Client or any third party (in which case, the provisions of clause 8 below shall apply).

8. Re-engagement Fees

8.1. Upon the direct Engagement by the Client of an Interim Company (or Interim Manager) Introduced by the Employment Business, or the Introduction by the Client of an Interim Company (or Interim Manager) to any third party resulting in an Engagement, the Client will be subject to the payment of an introduction fee calculated at 25% plus VAT of the annualised remuneration of the Interim Company or Interim Manager as offered by the Client in respect of the Assignment, provided that the Engagement takes place within a period of 6 months from the termination of the Assignment under which the Interim Company provided services to the Client.

9. Liability

9.1. The Client acknowledges that it has had the opportunity to interview the Interim Company and the Interim Manager provided to perform the services and to verify the experience, qualifications and references of the Interim Company and the Interim Manager.

9.2. Whilst the Employment Business will use reasonable endeavours to ensure reasonable standards of competence, integrity and reliability from the Interim Company and to provide the Interim Company in accordance with the Assignment specification, it will (subject to clause 9.3 below) not be liable for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with:

9.2.1. any failure by the Employment Business to provide an Interim Company for an Assignment;

9.2.2. the negligence, dishonesty, misconduct or lack of skill of the Interim Company or any of its staff (including, without limitation, the Interim Manager); or

9.2.3. any termination of the Assignment by the Interim Company for any reason.

9.3. For the avoidance of doubt, the Employment Business does not seek to exclude liability for fraud, death or personal injury arising from its own negligence, or any other matter for which it is unlawful to exclude or restrict its liability.

9.4. Subject to clause 9.3, the Employment Business shall not have any liability to the Client in any circumstances for any loss of profit, loss of goodwill, contract or reputation, pure economic loss, failure to make anticipated savings or for any indirect or consequential loss.

9.5. The Client accepts that the Interim Company is in business on its own account and therefore may be engaged to provide services to other clients of the Employment Business during the Assignment. However, the Employment Business shall use its reasonable endeavours to ensure that the Interim Company:

9.5.1. satisfactorily performs the services during the Assignment; and

9.5.2. does not accept instructions from third parties which could result in the Interim Company being engaged by competitors of the Client where this may reasonably be considered to have the potential to harm the commercial interests of the Client.

9.6. Neither the Interim Company nor its staff (including, without limitation, the Interim Manager) are under the supervision or control of the Employment Business.

9.7. The Client will comply in all respects with all applicable laws and other requirements including, without limitation, the provision of adequate public liability insurance in respect of the Interim Company.

9.8. Neither the Interim Company nor the Interim Manager shall be deemed to be an employee of the Client nor acquire any employment rights therein during the term of the Assignment.

9.9. Where an Assignment is terminated in accordance with clause 10, such termination will not affect the Client's obligation to pay the Charges or for any services or work already performed and verified by the Client pursuant to clause 6.

9.10. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of or as a result of

any non-compliance and/or breach of these Terms by the Client.

9.11. Subject to clause 9.3 above, the maximum liability of each Party to the other in respect of any Assignment (whether arising in contract, tort, restitution or otherwise) shall be limited to 120% of the Charges payable in respect of such Assignment.

10. Termination

10.1. The Client may terminate the Assignment by giving notice to the Employment Business in accordance with clause 3.1.7.

10.2. Without affecting any other right or remedy available to it, either Party may terminate these Terms with immediate effect if:

10.2.1. the other Party commits a material breach of any of these Terms and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;

10.2.2. the other Party repeatedly breaches any of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms;

10.2.3. the other Party shall become insolvent or cease to trade or compound with its creditors;

10.2.4. a receiver or administrative receiver is appointed in respect of any of the assets of the other Party;

10.2.5. a petition or an administration order is presented or such an order is made in relation to the other Party; or

10.2.6. a resolution or petition or order to wind up either Party is passed or presented or made or a liquidator is appointed in respect of the other Party (otherwise than

for reconstruction or amalgamation).

10.3. Notwithstanding the provisions of clause 10.1, the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:

10.3.1. the Interim Company has acted in breach of any statutory requirement or applicable law whilst carrying out the Assignment;

10.3.2. the Client reasonably considers the performance of the services by the Interim Company to be unsatisfactory (and has given the Interim Company notice of and a reasonable opportunity to rectify any unsatisfactory levels of service); or

10.3.3. if the Interim Company becomes insolvent or has an administrator or administrative receiver appointed or is put into liquidation (save for the purposes of solvent reconstruction or amalgamation) or any analogous event occurs.

11. Data Protection

11.1. In this clause 11 the following definitions will have the meanings given to them under the Data Protection Legislation: "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Data Subject", "processing" and "process".

11.2. Both Parties will comply with all applicable requirements of the Data Protection Legislation and will ensure that they have all necessary consents and notices in place to enable lawful transfer of Personal Data to the other Party for the duration and purposes of these Terms.

11.3. The Parties acknowledge that for the purposes of the Data Protection Legislation:

11.3.1. the Client is the Data Controller and the Employment Business is

the Data Processor of the Client's Personal Data; and

11.3.2. both the Employment Business and the Client are Data Controllers of any Interim Company or Interim Manager Personal Data.

11.4. Each Party shall, in relation to any Personal Data processed in connection with these Terms:

11.4.1. process that Personal Data only to the extent required to enable it to comply with its obligations under these Terms, or otherwise in accordance with (i) the written instructions of the other Party (when acting as a Data Processor) or (ii) applicable laws which otherwise enable it to process Personal Data;

11.4.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;

11.4.3. not transfer any Personal Data outside of the European Economic Area (other than in accordance with clauses 11.5 and 11.6 below) unless the prior written consent of the other Party has been obtained and appropriate safeguards and an adequate level of protection of any Personal Data transferred have been reasonably ensured;

11.4.4. assist the other Party, at the other Party's cost, in (i) responding to any request from a Data Subject and (ii) ensuring compliance with its obligations under the Data Protection Legislation;

11.4.5. notify the other Party without undue delay on becoming aware of a Personal Data breach affecting the other Party; and

11.4.6. at the written direction of the other Party (when acting as a Data Processor), delete or return Personal Data and copies thereof to the other Party on termination of these Terms unless required by applicable law to store the Personal Data.

11.5. The Client agrees that the Employment Business may process Personal Data using digital recruitment systems, software and programs, via its own IT systems and/or using third party programs and software.

11.6. The Client acknowledges and agrees that the Employment Business may:

11.6.1. engage third party IT system providers as sub-processors in the provision of its digital recruitment systems, software and programmes; and

11.6.2. engage other third-party sub-processors as required in connection with the processing of Personal Data within the sphere of these Terms.

11.7. The Employment Business confirms that it has entered or (as the case may be) will enter with any third-party sub-processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 11. The Employment Business will regularly monitor the performance of its subcontractors and will remain fully liable for all acts or omissions of any third-party sub-processor appointed pursuant to this clause 11.

11.8. The Employment Business shall make available to the Client its current list of sub-processors engaged upon request, which will include the identities of those sub-processors and their country of location. In case of any additions or changes to the current list,

the Employment Business will notify the Client in writing. If the Client has a reasonable basis to object to the Employment Business' use of a new sub-processor, the Client shall notify the Employment Business promptly in writing within 15 Business Days after receipt of the Employment Business' notice.

12. Confidentiality

12.1. Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party (or of any member of the group of companies to which the other Party belongs), except as permitted by clause 12.2.

12.2. Each Party may disclose the other Party's confidential information:

12.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under these Terms. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 12; or

12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3. Neither Party shall use any other Party's confidential information for any purpose other than to perform its obligations under or in connection with these Terms.

13. Notices

13.1. Any notice or other communication given to a Party under or in connection with these Terms shall be in writing and shall be:

13.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

13.1.2. sent by email to consult@jonlee.co.uk.

13.2. Any notice or communication shall be deemed to have been received:

13.2.1. if delivered by hand, on signature of a delivery receipt;

13.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

13.2.3. if sent by email, at 9.00 am on the next Business Day after transmission.

13.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14. Non-Solicitation

14.1. 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, or for a period of six months from, the end of the term of these Terms, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the Employment Business who has worked on the services provided under these Terms at any time during the term of these Terms other than by means of a national advertising campaign open to all-comers and not specifically targeted at such executives of the Employment Business.

15. Dispute Resolution

15.1. If any dispute arises in connection with these Terms, the Parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure.

15.2. Unless otherwise agreed between the Parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

15.3. To initiate the mediation a Party must give notice in writing ("ADR Notice") to the other Party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

15.4. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice. Neither Party may commence any court proceedings in relation to any dispute arising out of these Terms until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

16. Announcements

16.1. Neither Party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of these Terms, the wider transactions contemplated by it, or the relationship between the Parties, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

17. Miscellaneous

- 17.1. **Severance.** In the event that any term, condition, provision or clause of these Terms shall be nullified or made void by any statute, regulation or order or by the decisions or order of any court having jurisdiction, the remaining terms, conditions, provisions and clauses shall remain in full force and effect.
- 17.2. **Force Majeure.** Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the Party not affected may terminate these Terms by giving 15 Business Days' written notice to the affected Party.
- 17.3. **Variation.** No variation of these Terms shall be effective unless it is in writing and signed by the Parties.
- 17.4. **Entire Agreement.** these Terms constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

17.5. Assignment and Other Dealings.

Neither Party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

17.6. No Partnership or Agency.

Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms that it is acting on its own behalf and not for the benefit of any other person.

17.7. Governing Law & Jurisdiction.

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