



Terms of Business for the Introduction of Permanent or Fixed Term Contract Staff (to be Directly Engaged by the Client)

1. Definitions

1.1 In these Terms the following definitions apply:

“Agency” means DBCharles Recruitment Limited. Registered Company No of 10827208. Trading as DB Charles Recruitment of Unit 5a, Brick Knoll Park, Ashley Road, St Albans, Herts, AL1 5UG;

“Cancellation Fee” means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.9;

“Candidate” means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency’s own staff;

“Client” means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is Introduced;

“Data Protection Laws” means the Data Protection Act 1998 or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

“Engagement” means the engagement (including the Candidate’s acceptance of the Client’s offer), employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;

“Exclusive Retainer” means the appointment by the Client of the Agency on an exclusive basis in accordance with the terms of Clause 7;

“Exclusivity Term” means the period of any Exclusive Retainer;

“Introduction” means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;

“Introduction Fee” means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;

“Remuneration” includes gross base salary or fees, 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 for services rendered to or on behalf of the Client or any third party. Where the Client provides a company car, a notional amount of £5,000.00 will be added to the salary in order to calculate the Agency’s fee;

“Replacement Candidate” means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first 8 weeks of the Engagement;

“Vulnerable Person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.

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

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

2. The Contract

2.1 These terms of business and the attached Schedule(s) (“the Terms”) constitute the contract between the Agency and the Client for the Introduction of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client upon whichever shall be the earlier of: -

2.1.1 an Introduction or the Engagement of a Candidate; or

2.1.2 the passing by the Client of any information about a Candidate to any third party following an Introduction or

2.1.3 the arrangement of an interview, or the interview of any Candidate introduced by the Agency whether effected by the Agency directly or by the Client

2.1.4 the provision of a curriculum vitae or any information sufficient to identify the Candidate following a request by a Client; or

2.1.5 where the Agency is retained by the Client for an Exclusive Retainer the acceptance by the Agency and Client of the terms of the Exclusive Retainer.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) 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 a director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4 The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

2.5 The Introduction Fee will be charged whether or not the Client knew of the Candidate previously, therefore, the Client agrees to immediately notify the Agency, in writing, of any Candidates that it wishes to be excluded from any recruitment process.

3. Notification and Fees

- 3.1** The Client agrees to:
- 3.1.1** notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
 - 3.1.2** notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and
 - 3.1.3** pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.3
 - 3.1.4** pay all other monies due from the Client to the Agency under these Terms shall be paid by the Client within 14 days of the date of the Agency's invoice
- 3.2** The Introduction Fee, calculated in accordance with clause 3.4 below, is payable if the Client Engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).
- 3.3** The Introduction Fee shall be payable within 14 days of the date of the Agency invoice which shall be rendered once the Candidate commences the Engagement.
- 3.4** The Introduction Fee is the amount equal to 20% of the Remuneration applicable during the first 12 months of the Engagement.
- 3.5** Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.4 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.
- 3.6** Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.4 had the Candidate first been Engaged for 12 months or more.
- 3.7** Any Candidate introduced by a third party or by direct application relating to the engagement may not be accepted by the Client and must be notified to the Agency. In the event that such Candidate is engaged by the Client, the full fee, calculated on the hired Candidate's gross first year remuneration, as calculated in clause 3.4 shall be payable to the Agency irrespective of how the Candidate was sourced originally.
- 3.8** If the Agency provides an Advertising Service to the Client as set out with the accompanying Advertising Services Costs information in the schedule attached to these terms, such costs shall be paid by the Client within 14 days of the invoice date.
- 3.8.1** any Advertising Services Costs shall be agreed verbally and in writing between a director of the Agency and the Client, with a copy of the terms provided to both parties stating the date on or after which such terms shall apply.
 - 3.8.2** any Advertising Services Costs are non-refundable.
- 3.9** If the Agency provides a Consultancy Service to the Client as set out with the accompanying Consultancy Services Costs information in the schedule attached to these terms, such costs shall be paid by the Client within 14 days of invoice date.

3.9.1 any Consultancy Services Costs shall be agreed verbally and in writing between a director of the Agency and the Client, with a copy of the terms provided to both parties stating the date on or after which such terms shall apply.

3.9.2 any Consultancy Services Costs are non-refundable.

3.10 The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

3.11 VAT is charged at the standard rate on all fees.

3.12 The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.13 If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the Client shall be liable to pay the Agency a Cancellation Fee of 10% of the stated Gross Remuneration, plus all the agreed Advertising Services costs, Consultancy Services costs, travel expenses or any other stipulated and agreed costs.

3.14 In the event that any Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Agency or within 3 months of leaving the Agency, the Client shall be liable to pay the Agency a fee equivalent to the Introduction Fee calculated in accordance with clause 3.4. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 3.12 in any circumstances.

4. Refunds

4.1 If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant, terminated through constructive or unlawful dismissal, corporate restructure, change of management / job specification or job details, pregnancy, illness or injury) before the expiry of 8 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2 the Agency will offer an initial Free Replacement Candidate or following this if required a refund of the Introduction Fee in accordance with the accompanying Scale of Refunds Schedule attached to these Terms.

4.2 In order to qualify for the Free Replacement Candidate or following this a Refund as set out in clause 4.1:

4.2.1 the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement; and

4.2.2 all monies due from the Client have been paid in accordance with these Terms; and

4.2.3 the Client agrees to engage the Agency exclusively and does not resort to the use of other agencies and does not delay the interview process; then the Agency will seek to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill, at no extra cost to the Client except for agreed additional Advertising Services costs, Consultancy Services costs, travel costs or any other stipulated and agreed costs; and

4.2.4 if no suitable Free Replacement Candidate can be found the Client will then be eligible for a refund of the Introduction Fee, in the same proportions as the period not worked bears to 8 weeks (calculations will be done to the nearest week); and

4.2.5 if the Client increased the Gross Remuneration, then additional Fees will be payable as subject to the rest of clause 3; and

- 4.2.6** on Exclusive Retainers the refund will only be applicable against the Completion Fee; and
- 4.2.7** no refund or replacement shall apply to any subsequent Free Replacement Candidate.
- 4.3** For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 4.4** In circumstances where clause 3.6 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.
- 4.5** If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 6 calendar months from the date of termination, then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.
- 6.3.3** the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
- 6.3.4** any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 6.3.5** the date the Client requires the Candidate to commence the Engagement;
- 6.3.6** the duration or likely duration of the Engagement;
- 6.3.7** the minimum rate of Remuneration, expenses and any other benefits that would be offered;
- 6.3.8** the intervals of payment of Remuneration; and
- 6.3.9** the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

5. Introductions to Third Parties

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a "Third Party Introduction". If that Third Party Introduction results in an Engagement of the Candidate by the third party within 6 months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee calculated in accordance with clause 3.4. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

6. Suitability Checks

- 6.1** The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
 - 6.1.1** ensure that it would not be detrimental to the interests of either the Client or the Candidate;
 - 6.1.2** ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
 - 6.1.3** confirm that the Candidate is willing to work in the position;
 - 6.1.4** obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body.
- 6.2** Notwithstanding clause 6.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
 - 6.2.1** taking up any references provided by the Candidate before Engaging the Candidate;
 - 6.2.2** checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
 - 6.2.3** the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
 - 6.2.4** satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3** To enable the Agency to comply with its obligations under clause 6.1 above, the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
 - 6.3.1** the type of work that the Candidate would be required to do;
 - 6.3.2** the location and hours of work;

- 6.4** Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:
 - 6.4.1** obtain confirmation of the Candidate's identity;
 - 6.4.2** obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and
 - 6.4.3** obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

7. Exclusive Retainers

The provisions of this clause 7 shall, in addition to the other conditions of these Terms, (so far as applicable), apply in the case of any Exclusive Retainer.

- 7.1** The Agency agrees to Introduce Candidates to the Client for Engagement directly by the Client for the duration of the Exclusivity Term.
- 7.2** The Client agrees that during the Exclusivity Term it will exclusively use the services of the Agency for the Introduction of permanent or contract staff. The Client will not use the services of any other employment agency, directly or indirectly, other than the Agency save in circumstances where the Agency has searched for Candidates but is unable to Introduce Suitable Candidates for Engagement, or in the circumstances set out in clause 7.3.
- 7.3** Nothing in these Terms shall preclude the Client from
 - 7.3.1** responding to unsolicited approaches from third party agencies by referring that agency to the Agency to serve as a sub-contractor or consultant for the Agency;
 - 7.3.2** responding to unsolicited approaches from work-seekers directly;
 - 7.3.3** directly approaching work-seekers using its own resources.
- 7.4** Subject to the provisions for earlier termination set out in clause 7.5 below, the Exclusivity Term shall commence on the date of the Agency's acceptance of the Exclusive Retainer and continue until terminated by either party giving the other 3 months' written notice.
- 7.5** Either party may immediately terminate the Exclusivity Term by notice to the other if the other:

7.5.1 commits a breach of these Terms which in the case of a breach capable of remedy shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy;

7.5.2 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the party resulting from such reconstruction or amalgamation if a different legal entity shall agree to have the contract assigned to it and to take on all liabilities and obligations thereunder whether actual or contingent).

7.6 For the avoidance of doubt in the event that the Exclusivity Term is terminated by either party, the Client remains obligated to pay any fees (including any of the following: Introduction Fee / the applicable 3 stages of the Exclusive Retainer / Advertising Services costs / Consultancy Services costs / Travel Expenses or any other stipulated and agreed costs) owed to the Agency in accordance with the Terms, irrespective of whether these fees relate to an Introduction made before or after the Exclusivity Term is terminated.

7.7 On an Exclusive Retainer, fees will be payable by the Client to the Agency in 3 stages, as follows (unless agreed otherwise in accordance with clause 2.3):

7.7.1 a Commencement Fee is payable immediately upon the Agency being directed by the Client to begin the Exclusive Retainer Candidate search and is non-refundable;

7.7.2 a Shortlist Fee is non-refundable and payable upon presentation to the Client of a minimum of 3 Candidates who, in reasonable opinion of the Agency, meet the specification agreed;

7.7.3 a Completion Fee which will incorporate the Total Fee based on the actual Gross Remuneration of the Candidate minus the Commencement Fee & Shortlist Fee (if levied). This will be in accordance with the accompanying Scale of Exclusive Retainer Schedule attached to these terms. This fee is payable on the day the Candidate enters into a binding contract of employment and it shall be subject to the same conditions as set out in accordance with clause 3 ("Notification and Fees")

7.7.4 if an Exclusive Retainer is cancelled or deemed by the Agency to have been inactive beyond a period of 8 weeks, then in addition to the Commencement Fee and Shortlist Fee (if submitted), the Client shall pay a Cancellation Fee of 10% of the stated Gross Remuneration, plus all the agreed Advertising Services costs, Consultancy Services costs, travel expenses or any other stipulated and agreed costs between the Agency and Client.

7.7.5 if the Client instructs the Agency to carry out an Exclusive Retainer Advertising Service on their behalf, the cost of all media advertising, artwork and production shall be borne by the Client. Said cost will be charged to the Client as incurred and such costs shall be paid by the Client within 14 days of the invoice date.

7.7.6 should the Engagement of the successful Candidate resulting from the Exclusive Retainer terminate within the first 8 weeks from the first day worked by the Candidate, or should the Candidate not actually commence the Engagement with the Client, the Agency will revert to the Refund policy set out in clause 4.

8. Information to be Provided

When the Agency Introduces a Candidate to the Client the Agency shall endeavour to ensure the suitability of a Candidate and to maintain a high standard of service level and integrity however makes no warranty, express or implied, as to such suitability. The Agency agrees to obtain the Candidate's confirmation that they hold the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to

work in the position. The Agency will not carry out any unspecified further checks unless required and requested to do so by the Client. When the Agency introduces a Candidate to the Client the Agency will be confirming that the Agency has obtained confirmation of the matters set out in clause 6.1 and in the case of a position which involves working with Vulnerable Persons the matters in clause 6.4. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

9. Confidentiality and Data Protection

All information relating to a Candidate is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the DPA in receiving and processing the data at all times. In addition, information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

10. Liability

The Agency shall not be liable under any circumstances 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 the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

11. Notices

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

12. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

13. Severability

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

14. Governing Law and Jurisdiction

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

Schedule: Scale of Refund (Clause 4)

- 1** The following scale of refund only applies in the event that the Client complies with the provisions of clauses 3 & 4 of these Terms.
- 2** Where the Candidate ceases working for the Client during the first 8 weeks of the Engagement (except in circumstances where the Candidate is made redundant, terminated through constructive or unlawful dismissal, corporate restructure, change of management / job specification or job details, pregnancy, illness or injury) or fails to commence an Engagement, a refund of the Introduction Fee shall be paid to the Client in accordance with the scale set out below, subject to the conditions in clause 4.

Week in which the Engagement terminates	% of introduction fee refunded
Non Commencement	100%
0-2	80%
2-4	60%
4-6	40%
6-8	20%

- 3** There will be no refund where the Candidate's Engagement is terminated (or the Engagement would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 9th week of the Engagement.

Schedule: Scale of Exclusive Retainer (Clause 7)

On an Exclusive Retainer, the fees will be payable as follows in 3 stages (unless otherwise agreed as stipulated in Clause 2.3) and subject to the same conditions as set out in accordance with Clause 3 ("Notification and Fees").

Exclusive Retainer	% charged
Commencement Fee	6%
Shortlist Fee	7%
Completion Fee	7%
Total Fee Paid Amounts To	20%

Schedule: Advertising Costs

To be discussed and agreed during each recruitment process if applicable.

Schedule: Consultancy Costs

To be discussed and agreed during each recruitment process if applicable.