

# TERMS AND CONDITIONS OF BUSINESS FOR THE SUPPLY OF LIMITED COMPANY CONTRACTORS

(Outside the scope of the Agency Workers Regulations)

1. In these terms:-

“**Agreement**” means these Terms and Conditions of Business, the Project Specification, any Special Conditions, any schedules and any amendments or variations thereto;

“**Project Specification**” means the specific terms of the Project set out in the front sheet to this Agreement including any Special Conditions where applicable, hereinafter referred to as the “Specification”;

“**Client**” means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to whom the Contractor is supplied or Introduced;

“**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);

“**Contractor**” means the limited company Introduced and or supplied to perform Contractor Services;

“**Contractor Services**” means the services to be carried out by the Contractor pursuant to a Project;

“**Contract Site**” means the agreed location at or from which the Contractor Services will be performed as set out in the Specification or as may be agreed between the Client and the Contractor from time to time and notified to Morgan Philips;

“**Data Controller**” means (i) "data controller" in the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and (b) "controller" in accordance with the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018;

“**Data Protection Legislation**” means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation, (a) the Data Protection Act 1998; (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;

“**Engagement**” means the engagement, employment or use of the Contractor and or the Representative on a permanent or temporary basis, directly or indirectly through another legal entity, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement or any other engagement and “Engages” and “Engaged” shall be construed accordingly;

“**Extended Hire Period**” means a minimum period of 12 months (from the termination or expiry of the current Project) during which Morgan Philips shall be entitled to charge the Contract Rate (applicable at the end of the current Project) based upon the hours set out in the relevant Specification for the provision of the Contractor or such enhanced rate as the parties may agree in writing;

“**Fees**” means the fees due to Morgan Philips for the Contractor Services set out in the Specification, including the Contract Rate (which shall be calculated on the basis of an hourly, daily, weekly, or such other rate agreed between the Client and Morgan Philips), Overtime, Expenses, any completion bonus, Morgan Philips’s fee for its recruitment services, and any other fee set out in this Agreement, but exclusive of VAT;

“**Morgan Philips**” means Morgan Philips UK Limited, whose registered office is at Chancery House, 53 – 64 Chancery Lane, London WC2A 1QS, an employment business as defined by section 13(3) of the Employment Agencies Act 1973;

“**Morgan Philips Staff**” means those personnel, whether employed or engaged by Morgan Philips (directly or indirectly) who perform the recruitment services for the Client in accordance with this Agreement;

“**Intellectual Property**” means all copyright, trademarks, patents, design rights, inventions, rights and licences in databases, and all other intellectual property rights (including all moral rights) of a similar nature which may subsist anywhere in the world;

“**Introduction**” means the interview of the Contractor and or the Representative in person or by telephone by the Client or the provision of a curriculum vitae or other information to the Client which identifies the Contractor and or the Representative and “Introduced” shall be construed accordingly;

“**Personal Data**” means as set out in, and will be interpreted in accordance with Data Protection Legislation;

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with these Terms or which relates to any Candidate and, where applicable, to any Representative;

“**Process**” means as set out in, and will be interpreted in accordance with Data Protection Legislation and “Processed” and “Processing” will be construed accordingly;

“**Project**” means a specific project or assignment for which the Contractor is engaged to render the Contractor Services as specified by the Client or the Contractor, and for the period of time, as set out in the Specification;

“**Record of Work**” means the record of time spent by the Contractor in the performance of the Contractor Services which may be in the form of Morgan Philips’s timesheet, or an acceptance

certificate or other Project sign off documentation to record the Contractor Services as agreed between Morgan Philips and the Client;

**"Relevant Period"** means a period of 12 months after the expiry or earlier termination of the Project (including any extension thereof) except in respect of any Contractor and Representative who have not given notice pursuant to Regulation 32 of the Conduct Regulations, in which event the Conduct Regulations shall apply;

**"Remuneration"** means the aggregate gross annual taxable emoluments payable to or receivable by the Representative employed pursuant to the Engagement, including salary, bonuses, profit share, commission, pension contributions, allowances (including car, accommodation and or relocation), provision of company car, profit related pay and any signing-on payment or equivalent (contractual or otherwise and whether guaranteed or not) during the first year of the Engagement or attributable to such period and paid subsequently or the annualised gross fee of the Contractor or Representative (where the Contractor or Representative is Engaged on a self-employed basis or in any other capacity). Any taxable emoluments which are not guaranteed will be determined upon projected values. In the event the Client does not provide values for certain taxable emoluments Morgan Philips will deem the following gross values;

- (i) Pension Contributions - £2,000 per annum
- (ii) Car allowance or provision of Company car - £4,000 per annum
- (iii) Relocation, housing and or accommodation allowance £2,000 per annum value of the benefit or £2,000 per annum. Any taxable emoluments which are not expressed as gross will be grossed up to reflect their gross value in accordance with an agreed percentage or in the absence of agreement a rate of 66%;

**"Representative"** means the personnel named in the Specification (and which includes any agreed Substitute) to be utilised by the Contractor to perform the Contractor Services;

**"Special Conditions"** means any special terms and conditions in addition to these Terms and Conditions of Business and the Specification;

**"Substitute"** means the substitute for the Contractor or the Representative appointed in accordance with clause 3(d); and

**"Third Party"** means the third party to whom the Contractor and or the Representative has been introduced by the Client (which may include the Client's subsidiary, associated or parent companies).

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

References to clauses or schedules are references to clauses or schedules of this Agreement unless the contract otherwise admits.

### The Contract

2. (a) This Agreement constitutes the entire agreement between Morgan Philips and the Client for the provision of the Contractor Services and shall be deemed to have been agreed by the Client upon the Client either signing and returning this Agreement, by virtue of the Client's request for an Introduction of Contractor, or the Client's subsequent Engagement of Contractor Introduced or previously supplied by Morgan Philips, whichever occurs the earlier.

(b) This Agreement supersedes any previous agreement (including any oral agreement, representation and or understanding) between Morgan Philips and the Client relating to the Contractor Services

(which shall be deemed to have been terminated by mutual consent). The Agreement also takes precedence over any purchase order or any other terms or contracts which have been issued or are subsequently issued by the Client unless otherwise agreed by Morgan Philips.

(c) Subject to clause 5(a), no variation or alteration of this Agreement shall be valid unless approved by an authorised representative of both parties in writing and such document shall confirm the date upon which the varied terms are to take effect.

### Contractor Services

3. (a) The Contractor shall have autonomy in relation to determining the method of completion of the Project, but shall comply with reasonable and lawful instructions of the Client and Morgan Philips. Neither the Contractor nor the Representative shall be subject to the supervision or control of the Client or Morgan Philips.

(b) Morgan Philips procures that the Contractor will:

- (i) perform the Contractor Services with due care, diligence and professional skill and complies with any agreed timetable or other agreed targets or project requirements for the progress and delivery of the Contractor Services; and
- (ii) provide such tools and Equipment as are necessary for the performance of the Contractor Services.

(c) Morgan Philips will procure that the Contractor (including the Representative) complies with all applicable laws, rules and regulations specified by the Client (including, without limitation, rules and regulations in respect of any statutory obligations, data protection legislation, health and safety, internet and email use, and security).

(d) The Client confirms that Morgan Philips may provide a Substitute in respect of the performance of the Contractor Services, with the prior written consent of the Client, such consent not to be unreasonably withheld. Morgan Philips shall ensure that the Substitute fully understands the requirements of and the progress made in the Project.

(e) The Contractor shall not be prevented from being engaged, concerned or having any financial interest in any other business, trade, profession or occupation or from providing services to any other party whilst performing the Contractor Services provided that such activity does not cause a breach of, create a conflict of interest with, or prevent the Contractor's compliance with these Terms and Conditions.

(f) The Contractor Services shall be performed at or from the Contract Site as specified in the Assignment Specification, or at such other site as reasonably required by, or mutually agreed in writing with, the Client. In the event the Client and the Contract Resource agree the Contractor Services are to be provided away from the Contract Site, the Client shall ensure it is satisfied that the Contract Resource has adequate provision of office and communication facilities in order for the Contractor Services to be completed. The Contractor shall be entitled to perform the Services from the Contractor's office or place of business, provided this has been agreed in advance with the Client.

(g) The Contractor shall have flexibility as to the allocation of hours worked in any week, provided this is with the agreement of the Client.

(h) The Contractor shall be expected to exercise a degree of control as to the method of the performance of the Services however, Morgan Philips recognises that the Client shall reasonably expect

certain work standards and methods and undertakes to procure that these are complied with by the Contractor.

(i) At the reasonable request of the Client, Morgan Philips shall procure that the Contractor provides such tools and equipment as are necessary for the performance of the Contractor Services, whether away from the Contract Site or otherwise.

(j) The Client is not obliged to offer any further Projects to the Contractor through Morgan Philips and Morgan Philips is not obliged to offer or accept any further Projects on behalf of the Contractor in addition to those set out in the Specification.

#### **Invoicing and Payments**

4. (a) All invoices will be supported by a Record of Work confirming the Contractor Services performed during the weeks to which the invoice relates. On a weekly basis, the Client shall promptly verify and approve (whether by manual signature to or electronic approval through Morgan Philips's online approval system) all Records of Work that relate to the Contractor Services provided. The approval of the Client of any Records of Work (whether completed manually or electronically) shall constitute acceptance by the Client that the Contractor Services have been performed to the satisfaction of the Client (both in terms of the amount of time dedicated to and the quality of the Contractor Services).

(b) If the Client is unable to approve a Record of Work produced for authentication by the Contractor because the Client disputes the Contractor Services claimed, the Client shall inform Morgan Philips as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with Morgan Philips to enable Morgan Philips to establish what Contractor Services have been completed to a satisfactory standard by the Contractor. Failure to approve the Record of Work (whether manually or electronically) does not alter the Client's obligation to pay for the Contractor Services completed. The Client shall not be entitled to decline to approve a Record of Work on the basis that it is dissatisfied with the Contractor Services. In cases of unsatisfactory Contractor Services the Client should apply the provisions of clause 9 below.

(c) The Client shall retain the original approved copy of the Record of Work (whether this be a physical signed record or electronic confirmation of the approval). To aid the Client Morgan Philips may provide a facsimile copy of the Record of Work printed on the reverse of the invoice or attached to the invoice. If a Record of Work is not provided by Morgan Philips with the invoice, this does not constitute a reason for the non-payment of the invoice.

5. (a) The Client agrees to pay the Fees to Morgan Philips (or to discharge its responsibility through a third party) as advised to the Client in the Specification and which may be varied by Morgan Philips (on written notice to the Client which shall include the detail of the variation and the date it takes effect) in order to comply with any additional obligations imposed by statute.

(b) The Client will inform Morgan Philips in advance of any bonus that may be due and payable to the Contractor pursuant to the Specification and Morgan Philips will be entitled to invoice and the Client will be obliged to pay such bonus together with Morgan Philips's commission, charged in accordance with the rate charged on the Fees.

(c) Where due, VAT shall be payable on all Fees including sums due under 5(b) above.

(d) Expenses incurred in the provision of the Contractor Services

shall be included in the Contract Rate, unless otherwise agreed in the Specification. Morgan Philips shall invoice the Client for Expenses incurred in accordance with the Specification which have been authorised by the Client and which are supported by valid receipts or other documentation evidencing the expenditure. All expenses are subject to any taxes and duties imposed by the government from time to time.

(e) The Fees will be invoiced to the Client on a weekly or monthly basis as set out in the Specification and are payable within 7 days of the date of invoice.

(f) Failure to pay the Fees within this period entitles Morgan Philips to charge: (i) interest and associated charges as prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 (ii) a late payment fee equivalent to 1.5% of the value of the Fees not settled by the due date; and (iii) any expenses reasonably incurred by Morgan Philips in the collection of the unpaid Fees. Such late payment charges will be due immediately following Morgan Philips notifying the Client. Any interest and associated charges under sub-clause (i) above shall continue to accrue at a daily rate from the due date for payment until payment of the invoice is received in full.

(g) Morgan Philips may assign to a third party the right to render invoices and collect and receive payments.

(h) There are no refunds or rebates payable in respect of the charges of Morgan Philips.

#### **Transfer Fees**

6.(a) The Client acknowledges that Morgan Philips has undertaken considerable resource in sourcing and procuring the Contractor for the Client in the performance of its recruitment services. The Client therefore agrees that if the Contractor and or the Representative is Engaged either within twelve (12) months of the Contractor (or the Representative) having been Introduced to the Client (but not supplied to the Client), during the currency of the Project, or during the Relevant Period after the expiry or termination of the Project (including any extension of the Project) by:

(i) the Client;

(ii) any of the Client's subsidiary or associate companies (as defined in the Companies Act 2006) for whom the Contractor performed the Contractor Services;

(iii) any customer of the Client for whom the Contractor (or the Representative) performed the Contractor Services; or

(iv) any Third Party;

the Client shall notify Morgan Philips (within 3 days of the date of any offer or acceptance of any Engagement) and pay a transfer fee to Morgan Philips of 30% of the Remuneration payable to the Contractor (or the Representative) or in the event that the Remuneration is not known, a sum equivalent to 585 times the hourly charge (or 70 times the normal daily rate) in force in respect of the Contractor (or the Representative) as at the date of termination or expiry of the Project. No refund of any fees will be due in the event the Engagement subsequently terminates.

(b) To the extent that the Conduct Regulations apply to the Project, the Client may elect on giving 14 days prior written to Morgan Philips to take the Extended Hire Period as an alternative to paying the fee set out in sub-clause 6(a) above. In the event that the Client fails to elect to take the Extended Hire Period before the Engagement of the Contractor (or the Representative) in accordance with sub-clause 6(a) above, the Client agrees that the transfer fee shall become due upon the date of commencement of

the Engagement of the Contractor (or the Representative).

(c) If the Client knowingly fails to notify Morgan Philips of any Engagement of the Contractor (or the Representative) in accordance with sub-clause 6(a) above the Client will be liable to pay an additional fee of 5% of the Remuneration payable to the Contractor (or the Representative), representing a fair and reasonable pre-estimate of Morgan Philips's additional expenses incurred as a result of the Client's breach of the Agreement.

### **Liability**

7.(a) Whilst every effort is made by Morgan Philips to ensure reasonable standards of skills, integrity and reliability from the Contractor and to meet the booking details provided by the Client, no liability is accepted by Morgan Philips for any costs, claims, losses, damages or expenses arising from (i) the failure to introduce a Contractor for all or part of the Project or (ii) from the negligence, dishonesty, fraud, misconduct, lack of skill or other act or omission of the Contractor or the Representative or (iii) the termination of the Project by the Contractor for any reason.

(b) Nothing in this Agreement shall limit or exclude either party's liability in respect of fraud, death or personal injury arising out of any breach of this Agreement, in tort or however so arising.

(c) Subject to Clause 7 (b) above, neither party shall be liable to the other for any of the following types of loss or damage arising under or in relation to this Agreement:

(i) any liability to a third party, loss of present or future profits, business, contracts, corruption of data or information, anticipated savings, goodwill, revenue or wasted expenditure; or

(ii) any indirect or consequential loss or damage whatsoever, even if that party was advised in advance of the possibility of such loss or damage.

(d) Subject to Clause 7 (c) above Morgan Philips's total liability to the Client arising under or in connection with this Agreement, and whether arising in contract, tort, negligence, breach of statutory duty or otherwise for any losses, costs, claims, expenses or damages under this Agreement and/or in relation to the provision of the services and or Contractor Services during an Project shall be limited to 100% of the Fees paid or payable by the Client to Morgan Philips in relation to the Project to which the claim relates.

(e) The Client will comply in all respects with all statutes, including, for the avoidance of doubt, the working time regulations, by-laws and legal requirements to the extent that they apply to the Representative performing Contractor Services at the Contract Site, including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Contractor and the Representative during the Project. The Client shall indemnify Morgan Philips for all losses, costs, expenses, claims, or damages incurred by Morgan Philips arising from the Client's breach of the Agreement and or any act, error or omission of the Client arising out of or in connection with any Project.

### **Client Obligations**

8.(a) To enable Morgan Philips to comply with its obligations under the Conduct Regulations, the Client undertakes to and warrants it will provide the following information to Morgan Philips prior to any Project:

the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Contractor to possess in order to work in

the position;

any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;

details of any requirement for the Contractor to work with, care for, or attend any person who by reason of age, infirmity, illness, disability or other circumstance is in need of care and attention (and includes persons under 18 years of age) or whether the role or activities within a role would be covered by Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable;

all project details relating to the nature of the Project, the Contract Site, the dates and likely duration of the Project; and

(v) all project information requested by Morgan Philips to enable Morgan Philips to comply with the Conduct Regulations.

(b) For the purposes of sub-clauses 8(a) the Client warrants that:

(i) all information and documentation supplied to Morgan Philips is complete, accurate and up-to-date; and

(ii) it will not do anything to cause Morgan Philips to be in breach of any breach of any statute, legislation or other legal requirement affecting the provision of its recruitment services or the Contractor Services.

(c) The Client will immediately inform Morgan Philips in writing of any complaint or claim made by or on behalf of the Contractor or the Representative against the Client. The Client undertakes to give such information and assistance as Morgan Philips may request, and within any timeframe requested by Morgan Philips and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such claim.

(d) The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Contractor for the Contractor to complete the Project.

(e) For the avoidance of doubt, the obligations set out in this clause 8 shall not apply with respect to the Conduct Regulations, to the extent that the Contractor and the Representative have elected to opt out of the Conduct Regulations for the purposes of the Project and have provided notice to Morgan Philips pursuant to Regulation 32 of the Conduct Regulations; and

(f) The Project is outside the scope of the Agency Workers Regulations 2010 ("AWR") on the basis that the Contractor and the Representative have under contract declared to Morgan Philips that the Contractor and the Representative are not agency workers for the purposes of Regulation 3 of the AWR.

### **Termination**

9. (a) Without prejudice to the Client's rights of termination under sub-clause 9(b), if the services of the Contractor prove to be unsatisfactory the Client shall be entitled to terminate the Project without notice during the first five working days of the Project.

(b) Unless otherwise varied by the special terms and conditions in the Project Specification, either party may terminate an Assignment by giving the other party a minimum of 30 days notice in writing. Should the Client terminate an Assignment under this sub-clause but fail to give such notice then, without prejudice to any other right or remedy of Morgan Philips, the Client shall be responsible for the payment of Fees that would have been payable by it (calculated by reference to the periods specified in the Assignment Schedule) as if the full minimum notice had been given. The parties agree this payment is an enforceable liquidated damages clause and is not a penalty clause.

(c) Either party shall be entitled to terminate an Assignment forthwith by notice in writing to the other party, if the other party shall commit or allow to be committed:

(i) any material or irremediable breach of any of this Agreement; or  
(ii) any other breach of this Agreement (not being material), where the party in breach shall fail to remedy any such breach (where capable of remedy) within 14 days after notice has been given by the innocent party to the party in breach requiring remedy of the same.

(d) Save for the bona fide purpose of solvent reconstruction or amalgamation, if any action, application or proceeding is taken in respect of either party for (i) a voluntary arrangement or composition or reconstruction of its debts; (ii) the presentation of an administration petition; (iii) its winding-up or dissolution; (iv) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer or (v) any similar action, application or proceeding in any jurisdiction to which it is subject or if it is unable to pay its debts, the other party may without prejudice to any of its other rights, terminate an Assignment forthwith by notice in writing.

(e) In the event of termination of any Assignment by Morgan Philips under Clauses 9 (c) or 9 (d) above, any Fees falling due and payable to Morgan Philips at the date of termination shall be paid forthwith.

(f) Termination of an Assignment under any of the provisions hereof shall be without prejudice to the rights and obligations of the parties arising hereto prior to, or as a result of, such termination.

(g) In addition to any other termination rights set out in this clause 9, Morgan Philips may terminate the Assignment with immediate effect upon giving notice to the Client in the event that the Client issues or threatens to issue proceedings against Morgan Philips or if the Client fails to make payment of any sum due to Morgan Philips having received a prior written demand.

#### **Confidentiality**

10. (a) All information supplied by Morgan Philips to the Client about a Contractor is confidential and the Client agrees that it will not divulge such information to any third party.

(b) Morgan Philips shall ensure that the Contractor shall enter into an agreement to confirm that all information obtained about the Client during a Project shall remain confidential and that all systems developed during the course of a Project for the Client shall belong to the Client.

(c) The Client may not enter into direct negotiations or discussions with the Contractor with regard to charges, income, contract duration or termination, or any other matter relating to the Assignment save as is expressly allowed for within this Agreement.

(d) The parties agree to ensure that they will at all times comply with the provisions and obligations imposed by the Data Protection Legislation, and any other legislation in force from time to time in relation to the protection of personal data. The Client agrees to indemnify Morgan Philips in respect of any unauthorised disclosure of personal data received from Morgan Philips.

#### **Intellectual Property Rights**

11(a) On payment of all monies owed to Morgan Philips in relation to each Assignment, the ownership of all copyright and other intellectual property rights created during an Assignment shall vest in the Client, and Morgan Philips assigns such rights to the Client by way of future assignment.

(b) Nothing contained in this Agreement shall operate or constitute an obligation to vest in the Client any know-how, ideas, programming tools, skills and techniques belonging to Morgan Philips, the Contract Resource or any third party in existence prior to the date of this Agreement.

(c) Morgan Philips and the Contract Resource shall be entitled to continue to use and exploit methodologies, techniques, procedures and know-how employed in or associated with Assignments.

#### **Compliance with Relevant Requirements**

12 The Client shall:

(a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and sub-clause (b) above, and will enforce them where appropriate;

(d) promptly report to Morgan Philips any request or demand for any undue financial or other advantage of any kind received by the Client in connection with the performance of this Agreement;

(e) The Client shall provide such supporting evidence of compliance with this clause 12 as Morgan Philips may reasonably request.

The Client shall further ensure that any person associated with the Client who is receiving services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in this clause 12 (Relevant Terms). The Client shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Morgan Philips for any breach by such persons of any of the Relevant Terms.

#### **12 (A) Data Protection**

12.1 For the purposes of this clause 12 "Data Subject" means as set out in, and will be interpreted in accordance with Data Protection Legislation. For the avoidance of doubt, Data Subject includes Candidate and Representative.

12.2 The parties hereto acknowledge that Employment Business is a Data Controller in respect of the Personal Data of Candidate/Representative and provides such Personal Data to Client in accordance with the Data Protection Legislation for the purposes anticipated by these Terms.

12.3 The parties hereto acknowledge that Client is a Data Controller but the parties hereto are not Joint Controllers (as defined within Data Protection Legislation) save where a specific agreement is made to that effect between the parties hereto.

12.4 The parties hereto agree that the Representative is not Client's Data Processor (as defined within Data Protection Legislation) save where agreed otherwise within a Contractor Schedule and subject to additional terms and conditions.

12.5 The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by Client,

Employment Business or by Candidate or Representative, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation.

12.6 The parties hereto will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.

12.7 Client will -

a) comply with the instruction of the Employment Business as regards the transfer/sharing of data between the parties hereto. If Client requires Personal Data not already in its control to be provided by Employment Business, Client will set out their legal basis for the request of such data and accept that Employment Business may refuse to share/transfer such Personal Data where, in the reasonable opinion of Employment Business, it does not comply with its obligations in accordance with Data Protection Legislation;

b) not cause Employment Business to breach any of their obligations under the Data Protection Legislation.

12.8 In the event Client becomes aware of an actual or any reasonably suspected Personal Data Breach, it will immediately notify Employment Business and will provide Employment Business with a description of the Personal Data Breach, the categories of data that was the subject of the Personal Data Breach and the identity of each Data Subject affected and any other information the Employment Business reasonably requests relating to the Personal Data Breach.

12.9 In the event of a Personal Data Breach, Client will promptly (at its own expense) provide such information, assistance and cooperation and do such things as Employment Business may request to -

- a) investigate and defend any claim or regulatory investigation;
- b) mitigate, remedy and/or rectify such breach; and
- c) prevent future breaches.

and will provide Employment Business with details in writing of all such steps taken.

12.10 Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of Employment Business.

12.11 Client agrees it will only Process Personal Data of Candidate or of Representative for the agreed purpose of provision of Services pursuant to these Terms.

12.12 Client will provide evidence of compliance with clause 12 upon request from Employment Business.

### **General**

13. Morgan Philips reserves the right to review and where necessary (in Morgan Philips's absolute opinion) to increase the Fees at any time upon giving notice in writing to the Client in line with any statutory changes, including but not limited to, any changes to VAT or equivalent local indirect tax.

14. Morgan Philips reserves the right to vary the Fees agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations, the working time regulations, the Pensions Act 2008 and any changes to VAT or equivalent local indirect tax.

15. All notices under this Agreement shall be in writing and shall be delivered personally or shall be sent by prepaid first class post, by

fax or by electronic mail to the registered office of the party upon whom the notice is to be served. In the absence of evidence of earlier receipt, a notice is deemed given if personally when delivered, if by first class post within 2 days, if by fax when dispatched, provided the transmission report is retained and in the case of electronic mail on the date electronic confirmation of receipt is received

16. The Client agrees that (i) each of the sub-clauses contained in Clause 6 constitute an entirely separate, severable and independent covenant and restriction, (ii) the duration, extent and application of each of the

restrictions contained in Clause 6 are fair, reasonable and necessary for the protection of the goodwill and business interests of Morgan Philips and (iii) that the placement fee set out in Clause 6(a) represents a genuine pre-estimate of the placement fee which would be typically payable for the permanent placement or introduction of the Contractor at the level of experience and expertise required and is therefore a fair and reasonable fee.

17. If any provision of this Agreement is held to be unenforceable, unlawful or void by a court of law, but would be enforceable or lawful if removed or modified, such provision may be modified or removed from the remaining Terms and Conditions to give meaning to the intention of the parties.

18. The Client undertakes that during this Agreement and for 6 months thereafter it shall not, directly or indirectly, solicit or entice away Morgan Philips Staff for employment, engagement or other use by the Client. If the Client breaches this clause, it shall be liable to pay to Morgan Philips a fee equivalent to the fee set out in Clause 6(a) and any direct loss of revenue incurred by Morgan Philips arising from the period during which Morgan Philips does not have a replacement for the Morgan Philips Staff. In the event that Morgan Philips Staff introduce themselves in response to a Project vacancy of the Client, that the Client instructs Morgan Philips to fill, Morgan Philips Staff shall be deemed to be a Contractor Introduced for the purposes of this Agreement.

19. In the event of any conflict between the Terms and Conditions herein and the Specification, the Specification shall take precedence over the Terms and the Conditions to the extent of such conflict.

20. Termination or expiry of this Agreement shall not affect any rights, duties or liabilities of either party that accrued prior to termination or those terms which by their nature are intended to continue in effect.

21. Both parties hereby expressly exclude any operation of the Contracts (Rights of Third Parties) Act 1999 ("1999 Act") and agree that no terms of this Agreement shall be enforceable by a third party by virtue of the 1999 Act, and this Agreement or any Assignment can be rescinded or varied by agreement between the parties without the consent of any such third party. For the purposes of this clause a third party means any person who is not party to this contract.

22. The Client shall pay all sums due to Morgan Philips without any discount, deduction, legal or equitable set off or counterclaim, unless otherwise agreed in writing by Morgan Philips.

23. The parties agree that damages may be an inadequate remedy for a breach of clauses 6 and 10 above and that Morgan Philips may injunct the Client from breaching that clause where in Morgan Philips's opinion a breach is threatened or has occurred.

24. The Agreement shall not constitute nor imply any partnership,

joint venture, employment, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement. Neither party shall have, nor represent that it has, any authority to make any contractual commitments on the other party's behalf.

25. These terms are governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.

**Duly authorised for and on behalf of  
Morgan Philips UK Limited**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Duly authorised for and on behalf of  
The Client**

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_