



TERMS OF BUSINESS AND AGREEMENT (TOBA)

1. Definitions

In these Terms of Business Agreement (“TOBA”) the following definitions apply:

Cancellation Fee Staffing Recruit LTD of 85 Great Portland Street First Floor London W1W 7LT; means the performance by each party of its obligations under this TOBA. means the fee payable by the Client to Staffing Recruit 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.j.

Candidate means the person Introduced by Staffing Recruit 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 Staffing Recruit’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 Projection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Engagement means the engagement, 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, 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;

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 Staffing Recruit 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 in accordance with the Fee Structure set out at Schedule 1 to this TOBA by the Client to Staffing Recruit for an introduction resulting in an Engagement.

Permitted Recipients means the parties to this agreement, the employees of each party, and any third parties engaged to perform obligations in connection with this TOBA.

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.

Replacement Candidate means any Candidate Introduced by Staffing Recruit 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 12 weeks of the Engagement.

Shared Personal Data Means the personal data to be shared between the parties.

Vulnerable Person means any person who by reason of age, infirmity, illness, disability or any other circumstance needs care or attention.

2. The Contract

- a. This TOBA and the attached Schedule(s) (“the Schedules”) constitute the contract between Staffing Recruit and the Client for the supply of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.
- b. This TOBA contain the entire agreement between the parties and unless otherwise agreed in writing by a director of Staffing Recruit, this TOBA prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.
- c. No variation or alteration to this TOBA shall be valid unless the details of such variation are agreed between a director of Staffing Recruit 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.
- d. Staffing Recruit 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.
- e. Each party warrants that it has full capacity and authority to enter into and perform this agreement.

3. Notification of Fees

- a. The Client agrees to: (i) notify Staffing Recruit immediately of the terms of any offer of an Engagement which it makes to the Candidate. (ii) notify Staffing Recruit immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to Staffing Recruit of the Remuneration agreed with the Candidate together with any documentary evidence as requested by Staffing Recruit.
And (iii) pay the Introduction Fee to be calculated in accordance with the provisions of this clause 3.f.

- b. The Introduction Fee shall be payable within seven days of the date of Staffing Recruit invoice.
- c. The Introduction Fee is calculated in accordance with the attached Fee Structure Schedule based on the Remuneration applicable during the first 12 months of the Engagement.
- d. Where prior to the commencement of the Engagement Staffing Recruit 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 Engagement is (a) extended beyond the initial fixed term or (b) if the Client re-Engages the Candidate within six calendar months from the date of termination of the first or any subsequent Engagement, then the Client shall be liable to pay a further 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 fee than the fee which would otherwise have applied under clause 3.c had the Candidate first been Engaged for 12 months or more.
- e. If the Client subsequently Engages the Candidate within the period of six 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), then the full Introduction Fee calculated in accordance with clause 3.c above becomes payable, unless the parties agree that the subsequent Engagement is for a fixed term of less than 12 months in which case clause 3.d will apply.
- f. 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.

- g. Staffing Recruit 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.
- h. Where the actual Remuneration is not known, Staffing Recruit will charge an Introduction Fee calculated in accordance with clause 3.c based on Staffing Recruit sole 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 Staffing Recruit by the Client and/or comparable positions in the market generally.
- i. 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 Staffing Recruit a Cancellation Fee of £500 to cover administrative costs incurred by Staffing Recruit.
- j. In the event that any Staffing Recruit staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by Staffing Recruit or within 3 months of leaving Staffing Recruit, the Client shall be liable to pay an Introduction Fee to Staffing Recruit calculated in accordance with clause 3.c.

4. Refunds

4a. If, after an offer to a Candidate by the Client 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 before the expiry of 12 weeks (except in circumstances where the Candidate is made redundant) from the date of commencement of the Engagement, then subject to the terms of clause.

4.b: Staffing Recruit will refund the Introduction Fee in accordance with the accompanying Scale of Refunds set out in the Schedule attached to this TOBA.

b. In order to qualify for the refund set out in clause 4.a: (i) the Client must comply with the provisions of clause 3.a and must notify Staffing Recruit in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of the Engagement's termination or non-commencement and the Client must pay or have paid the Introduction Fee by the due date for payment; and (ii) the Client must exclusively give Staffing Recruit 4 weeks from the date of the notice of noncommencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 4 weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of 12 weeks from the date of commencement of the Engagement the Client will then be eligible for a refund, subject to the rest of clause.

4c. 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.

4d. In circumstances where clause 3.e applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.

e. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of six calendar months from the date of termination, then the refund shall be repaid to Staffing Recruit. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

5. Introduction 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 six months of Staffing Recruit Introduction of the Candidate to the Client, then the Client will be liable to Staffing Recruit for payment of an Introduction Fee in accordance with clause 3. 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

a. Staffing Recruit endeavours to ensure the suitability of any Candidate Introduced to the Client to work in the position the Client seeks to fill by taking reasonably practicable steps to:

- i. ensure that it would not be detrimental to the interests of either the Client or the Candidate
- ii. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body that must be satisfied to enable the Candidate to commence work.
- iii. confirm that the Candidate is willing to work in the position

b. Notwithstanding clause 6.a the Client shall be obliged to satisfy themselves as to the suitability of the Candidate for the position, they are seeking to fill. The Client is responsible for:

- i. Taking up any references provided by the Candidate before Engaging the Candidate.
- ii. 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.
- iii. If applicable, the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and iv. satisfying any medical and other

requirements, qualifications or permission required for the Candidate to work in the Engagement

c. To enable Staffing Recruit to comply with its obligations under 6.a above the Client undertakes to provide Staffing Recruit details of the position which the Client seeks to fill, including the following:

- i. the type of work that the Candidate would be required to do.
- ii. the location and hours of work.
- iii. 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.
- iv. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks.
- v. the date the Client requires the Candidate to commence the Engagement.
- Vi. the duration or likely duration of the Engagement. the minimum rate of Remuneration, expenses and any other benefits that would be offered.
- Vii. the intervals of payment of Remuneration; and the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

d. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person Staffing Recruit shall, in addition to the obligations in clause 6.a, take reasonably practicable steps to:

- i. Obtain confirmation of the Candidate's identity
- li. 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
- iii. 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 Staffing Recruit has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client that it has taken all reasonably practicable steps to obtain such information and has been unable to do so and shall inform the Client of the steps it has taken to obtain this information in any event.

7. Information to be provided

When Staffing Recruit introduces a Candidate to the Client Staffing Recruit shall inform the Client that they have obtained confirmation of the matters set out in clause 6.a and in the case of a position which involves working with Vulnerable Persons the matters in clause 6.d. 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.

8. Confidentiality

- a. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients, Candidates or suppliers of the other party, except as permitted by clause 8.b.
- b. Each party may disclose the other party's confidential information:(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this TOBA. Each party shall ensure that its employees, officers, discloses the other party's representatives or advisers to whom its confidential information comply with this clause 8; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c. No party shall use any other party's confidential information for any purpose other than to perform its obligations under or in connection with this TOBA.

9. Data Protection

a. This clause 9 sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

b. Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

c. Each party shall: (i) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes. (ii) give full information to any data subject whose personal data may be processed under this TOBA of the nature such processing. This includes giving notice that, on the termination of this TOBA, personal data relating to them may be retained by or transferred to one or more of the Permitted Recipients, their successors and assignees. (iii) process the Shared Personal Data only for the Agreed Purposes; not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;(iv) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this TOBA;(v) 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; and (vi) not transfer any personal data outside of the European Economic Area unless the transferor:

d. (1) complies with the provisions of Article 26 of the General Data Protection Regulation (in the event the third party is a joint controller); and (2) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the General Data Protection Regulation; (ii) there

are appropriate safeguards in place pursuant to Article 46 of the General Data Protection Regulation; or (iii) one of the derogations for specific situations in Article 49 of the General Data Protection Regulation applies to the transfer. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. Each party shall:

(i) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data; (ii) promptly inform the other party about the receipt of any data subject access request; provide the other party with reasonable assistance in complying with any data subject access request. (iii) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible; (iv) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (v) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation; (vi) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this TOBA unless required by law to store the personal data; (vii) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers; (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause 9; and (ix) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

10. Liability

- a. Staffing Recruit 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 Staffing Recruit providing any information regarding a Candidate for the Client (and Staffing Recruit does not warrant the veracity of any such information) or from the Introduction to or Engagement of any Candidate by the Client or from the failure of Staffing Recruit to introduce any Candidate. For the avoidance of doubt, Staffing Recruit does not exclude liability for death or personal injury arising from its own negligence, for fraud or for any other loss which it is not permitted to exclude under law.
- b. The Client shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all its rights and obligations under this agreement without the prior written consent of Staffing Recruit.

11. Notices

- a. All notices which are required to be given in accordance with this Agreement 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.
- b. In the event that ownership of the Client changes for whatsoever reason the Owners, Partners or Directors of the Client who agreed to this TOBA of Business at the time of the Introduction by Staffing Recruit will be personally liable for any matters outstanding under this contract.
- c. In the event that the Client goes into administration or is wound up the Directors, Partners or Owners of the Client will be personally liable for any outstanding invoices unpaid.

12. Severance

- a. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- b. If any provision or part-provision of this agreement is deemed deleted under clause 12.a the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13. Governing Law & Jurisdiction

This TOBA is in accordance with the laws of England and Wales and laws of Scotland. To the exclusive jurisdiction of the London High Court and the court of Session in Scotland.

Schedule 1 (Fee Structure) Annual Remuneration of Candidate Fee due to Staffing Recruit will be:

Tier	Number Of Candidates	Rate
Tier 1	1–2 candidates	8% of each candidate's annual salary
Tier 2	3–6 candidates	6% of each candidate's annual salary
Tier 3	7 or more candidates	4% of each candidate's annual salary

The following payment options are available: a one-off payment, which includes a 10% discount on the total fee, or a flexible payment plan allowing the fee to be distributed in equal instalments over a period of up to three months. Both options apply to all pricing tiers.

1. 2. Schedule 2 (Scale of Refund)

The following scale of refund only applies in the event that the Client complies with the provisions of clauses 3.a, 3b, 4.a and 4.b of this TOBA.

Where the Candidate ceases working for the Client during the first 12 weeks of the Engagement (except where the Candidate is or will be made redundant) or fails to commence an Engagement, except in the circumstances set out in clause 3.j, 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.a and 4.b.

Week in Which the Engagement Terminates in Accordance with Clause 4.b (%) of Introductory Fee Refunded.

Weeks	% age
Non-Commencement	100
1–2	90
3–4	80
5–6	60
7–8	40
9–10	20
11–12	10

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 13th week of the Engagement.

Signed on behalf of Staffing Recruit LTD:	
Signed for and on behalf of the Client <i>*I am authorised to sign this Agreement on behalf of the Client.</i>	
Full Name	
Company Name	
Date	