

SOMERSET WHITE

RECRUITMENT TERMS FOR THE INTRODUCTION OF PERMENANT OR SHORT-TERM CONTRACT STAFF (TO BE CONTRACTED BY THE CLIENT OR MEMBER, ACTING AS EMPLOYER)

If a Member or Client (collectively referred to as “Client” herein) instructs the Company to search for a suitable person (the “Applicant”) to be Introduced by the Company for the purposes of an Engagement the following terms (“Recruitment Terms”) will apply:

1. **Definitions**

For the purposes of these Recruitment Terms, the following definitions shall apply:

- 1.1. “Applicant” means the person (whether or not previously known to the Client or Member) introduced by the Company to the Client for an Engagement including (without limitation) any officer, member, employee or other representative of the Applicant if the Applicant is a corporate body or partnership (including limited company or limited liability partnership), and members of the Company's own staff.
- 1.2. “Engagement” means the appointment of an Applicant to perform services for a Client or on a Client's behalf or for or on behalf of any third party at a Client’s request, whether directly or through a company which the Applicant is an officer or employee or which is controlled by the Client (“Engage”, “Engaged” and “Engaging” shall be construed accordingly). Engagements can be part-time, full-time, temporary or permanent as outlined in the instructions from the Member or Client to the Company;
- 1.3. “Client” means the person, firm or corporate body to which the Applicant is introduced and/or has instructed the Company to fill a vacancy, and includes a Member.
- 1.4. “Company” means Somerset White Limited (3817716) whose registered office is at 1st Floor, 591-593 Kings Road, London SW6 2EH.
- 1.5. “Introduction” means (i) the interview of an Applicant by or on behalf of a Client in person or by telephone following a Client’s instructions to the Company to search for an Applicant; or (ii) the passing to a Client of a curriculum vitae or information which identifies the Applicant and which leads to an offer of Engagement of that Applicant and in both (i) and (ii) irrespective of whether or not that Applicant was known previously to the Client. (“Introduced” shall be construed accordingly);
- 1.6. “Introduction Fee” means the placement fee payable by the Client to the Company at the rate set out in the appropriate Price Guide;
- 1.7. “Member” means an individual who receives services and benefits from the Company as detailed in a separate membership agreement.
- 1.8. “Part Time Placement” is a placement of 32 hours or less a week, details of which are in the Price Guide.
- 1.9. “Price Guide” means a schedule detailing the amounts payable to the Company by either the Client upon appointing the Company and on the Engagement of an Applicant.
- 1.10. “Remuneration” means the gross salary payable to an Applicant in respect of the first 12 months of the Engagement notwithstanding that the Engagement may be terminated during that period. If the value of the Remuneration is uncertain, the best estimate available, to be agreed between the Company and the Client, shall be used in calculating such amount. For Temporary Placements Remuneration will be the entire gross salary received by the Applicant for the duration of the Engagement.
- 1.11. “Retainer Fee” means a non-refundable deposit (detailed in the Price Guide) which must be paid in order for the Company to begin its candidate search on behalf of the Client.
- 1.12. “Temporary Placement” is a placement that lasts 6 months or less, details of which are in the Price Guide.

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1.13. “Terms” means these recruitment terms.

1.14. “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.

2. **The Agreement**

2.1. These Terms constitute the entire agreement between the Company and Client for the advertisement and supply of permanent or contract staff (to be engaged directly by the Client). These Terms are deemed to be accepted by the Client on the earliest date of either (i) the Client’s signature on any recruitment paperwork or application form that is provided by the Company (ii) an Introduction, offer of Engagement or Engagement to an Applicant (iii) a request received by the Company from the Client for information regarding an Applicant or to interview an Applicant or (iv) the passing by the Client of any information about the Applicant to any third party. These Terms supersede all previous discussions and previous agreements in relation to recruitment and shall prevail over any other terms put forward by the Client.

2.2. No variation or alteration to these Terms shall be valid unless they are agreed in writing between a Director of the Company and/or the Recruitment Director and the Client.

2.3. The Company acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Applicants to the Client for direct Engagement by that Client. The Client authorises the Company to act on its behalf in advertising for and seeking Applicants.

2.4. It is the Client’s responsibility to immediately inform the Company where they receive information and/or a CV from the Company in relation to an Applicant which they have already received from a different agency, company or individual. If no such notification is received by the Company and in the event that an offer is made to the Applicant, the Company is entitled to charge the Introduction Fee or a proportion thereof that shall be payable to the Company, notwithstanding any fee or charges that may be payable to any other agency or company. The Retainer Fee is still payable when using multiple agencies and is non-refundable in any event.

2.5. In the event the Company informs you that it is sourcing an Applicant from a third-party agency in order to find the most suitable candidate, the third-party agency’s fees and terms will apply in addition to our Recruitment Terms. The Retainer Fee is still payable to the Company when using this third-party service.

3. **Standards Required**

3.1. The Client agrees to provide sufficient information to the Company to enable it to assess the suitability of an Applicant for the Engagement. The Client agrees in particular to provide the following information at the time of requesting the Services:

3.1.1. the date on which it is proposed that the Engagement should begin and the duration or likely duration of the Engagement;

3.1.2. the position to be filled including the type of work which the Applicant would be required to do, the location at which and the hours during which the Applicant would be required to work;

3.1.3. any risks to health or safety relevant to the Engagement and the steps taken by you to prevent or control such risks;

3.1.4. the experience, training, qualifications and any authorisations which are necessary (or which are required by law or by any professional body) for the Applicant to possess in order to work in the position and any expenses payable by or to the Applicant;

3.1.5. the minimum and maximum rates of pay and any other benefits to be offered in respect of the relevant position and the intervals at which they would be paid; and

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3.1.6. where applicable, the length of notice which the Applicant would be required to give and entitled to receive to end the Engagement.

4. **Skills and Qualifications**

4.1. The Company will use its reasonable endeavors to ensure that all Applicants are suitable for the Engagement but gives no warranty in this regard.

4.2. The Company cannot guarantee to find a suitable Applicant for each or any vacancy.

4.3. The Company may be required or tasked with carrying out various background checks on Applicants on behalf of the Client, however, the Client has sole responsibility for: (i) satisfying itself that the Applicant has the necessary qualifications and skills to perform the duties required including, without limitation, by taking up and/or confirming any references (including the confirmation of any professional or academic qualifications) supplied by the Company and/or the Applicant before Engaging the Applicant; (ii) obtaining any work permit necessary for the Engagement; (iii) verifying any medical and other requirements or qualifications required by law or essential for the Engagement; and (iv) ensuring compliance with all legal obligations of the Applicant in respect of any contract relating to their existing employment or engagement.

4.4. The Company can request an Applicant undertakes an official background check such as a DBS check, upon written request from the Client, but takes no responsibility for the accuracy of the information provided by the Applicant for such checks and therefore the accuracy of the results of these checks.

4.5. Where the Applicant is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Company shall, in addition to the obligations in clause 4.2, take reasonably practicable steps to:

(a) obtain confirmation of the Candidate's identity.

(b) obtain confirmation that the Applicant 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 (c) obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Applicant and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Applicant. If the Company 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.

4.6. Should the Client be provided with a non-disclosure agreement, offer letter or contract by the Company to issue to the Applicant, the Company makes no guarantee or warranty that they shall be fit for the purpose the Client requires and it is the Client's responsibility to ensure it is suitable and legally binding.

5. **Applicant Trials**

5.1 Should a Client wish to trial an Applicant for an Engagement, the Client must notify the Company in advance. Such trials shall not exceed 2 working days for Temporary Placements or 5 consecutive working days for Permanent Placements.

5.2 The Client is responsible for paying Applicants directly at the end of the trial session with a fee payable to the Company within 14 days as detailed in the Price Guide.

6. **Notification and Fees**

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- 6.1. Upon appointment of the Company, a Retainer Fee shall be charged to the Client in order for the Company to commence performance of the vacancy search. The Company will not commence the search until the Retainer Fee has been paid in cleared funds. This Retainer Fee will be deductible from the Placement Fee in the event of a successful placement.
- 6.2. The Introduction Fee payable on Engagement (inclusive of Part-Time Placements and Temporary Placements) is calculated in accordance with the Price Guide issued to Clients upon the date they requested a search for a particular role. If a placed Applicant transitions from a Temporary Placement to a permanent position or a Part-Time Placement's hours are increased and/or there is an increase in Remuneration within 12 months of commencement of the Permanent or Temporary Placement, the company shall be entitled to raise a further invoice reflecting the increase in Remuneration (as detailed in the Price Guide).
- 6.3. The Introduction Fee will be payable for an Introduction which results in that Applicant being Engaged, whether the offer of such Engagement is made immediately or at any time within a 12 month period following the date of Introduction or final interview, whichever takes place later.
- 6.4. Where an offer is made to Engage an Applicant, the Client shall notify the Company of such offer on the same day. The Client shall advise the Company immediately if an offer of Engagement is accepted by the Applicant providing full details of the Applicant's Remuneration and the Applicant's agreed start date.
- 6.5. The Client is solely responsible for any and all offers of employment made to the Applicant and these must be made directly by the Client to the Applicant; and the Company takes no responsibility for the accuracy and/or subsequent withdrawal of said offers and any consequences of the withdrawal of any offer.
- 6.6. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Applicant within 12 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 6.2 had the Applicant first been Engaged for 12 months or more.
- 6.7. If: (i) a Client or any of a Client's employees or representatives refer an Applicant directly or indirectly to a third party within twelve months of the Introduction and such third party Engages the Applicant; or (ii) any Engagement of an Applicant occurs as a direct or indirect result of the Introduction of the Applicant then the Company shall be entitled to charge the Client the Introduction Fee as though the Client themselves had Engaged the Applicant. In such circumstances, the Client shall not be entitled to any refund referred to in clause 8 below.
- 6.8. The Introduction Fee shall be payable within 14 days of the date of the Company's invoice, which will be rendered at any time on or after the date of Engagement acceptance.
- 6.9. Where applicable, VAT is charged at the standard rate on all fees. All invoices must be settled in full in GBP Sterling and for the avoidance of doubt the Client is solely responsible for paying all bank transfer, currency conversion and other fees and charges so that the full amount of the invoice is received by the Company.
- 6.10. The Company 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 5% per annum above the base rate of the Bank of England from the due date until the date of payment.

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6.11. If, after an offer of Engagement has been made, the Client decides for any reason to withdraw it at any time prior to the commencement of Engagement, the Client shall be liable to pay the Company a Cancellation Fee calculated at 10% of what the Introduction Fee would have been under clause 6.2 had the commencement of Engagement taken place.

7. **Payment**

- 7.1. Prior to the Company starting the search for an Applicant on behalf of the Client, a non-refundable Retainer Fee must be paid in cleared funds
- 7.2. The Company shall be entitled to raise an invoice for the Introduction Fee payable by the Client on or at any time after the day on which the Applicant accepts any offer of an Engagement, or where a third party Engages an Applicant as referred to in clause 6 above. The Retainer will be deducted from this fee.
- 7.3. The Introduction Fee is payable within 14 days of the date of the invoice. If the Introduction Fee, or any other sum payable under the terms of this Schedule, is not paid in full on its due date, the Company shall be entitled to charge interest in accordance with these Terms and Conditions.
- 7.4. Should an invoice remain unpaid in whole or in part for 14 days or more after the due date, the Client shall lose all rights to claim a rebate under clause 8.
- 7.5. In the event that a Client fails to inform the Company of the acceptance by the Applicant of any offer of Engagement (as outlined in clause 6 above) the Client will be liable for interest on the Introduction Fee due from the date on which such acceptance was communicated by the Applicant.

8. **Refunds & Rebates**

- 8.1. For Full-Time Engagements, subject to clause 7.3, if the Engagement terminates within six weeks of its commencement, the Client will be entitled to a full refund in respect of the Introduction Fee subject to the deduction by the Company of an administration fee of £250 plus VAT. For the avoidance of doubt, the Retainer Fee shall not be refunded. The Company will use all reasonable commercial endeavours to send a reminder to the Client of the date after which it will no longer be entitled to the refund of the Introduction Fee, such reminder to be given at least a week prior to such date either by email or in a manner that the Client typically prefers to communicate.
- 8.2. For Temporary Placements, subject to clause 7.3, if the Engagement terminates before its agreed termination date, the Client will be entitled to a refund of 75% of the placement fee for each week not worked. For the avoidance of doubt, the Retainer Fee shall not be refunded; the refund will be 75% of the sum of the placement fee minus the Retainer Fee.
- 8.3. A refund will not be paid where: (i) an invoice remains unpaid in whole or in part for 14 days or more after its due date; or (ii) an Engagement has been terminated by reason of redundancy or for any unlawful reason or without reasonable cause; or (iii) the Applicant has left the Engagement because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to acceptance of such Engagement; In addition, the Client must notify the Company of any such termination within 3 working days. Furthermore, the amount of any such rebate or refund shall be immediately repayable by the Client if, within the period of twelve months from such termination of the Engagement, the Applicant is subsequently re-Engaged by the Client (or, where the Client is a company, by any member of such Client's Group).

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9. **Liability**

- 9.1. The Company shall not be liable under any circumstances whether in contract, tort (including negligence), breach of statutory duty, or otherwise 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 (i) the Company seeking an Applicant for the Client (ii) the Introduction to or Engagement of any Applicant by the Client (iii) the failure of the Company to introduce any Applicant (iv) any act or omission of any Applicant (whether willful, negligent, fraudulent, reckless or otherwise). Nothing in these Terms shall limit or exclude the Company's 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.
- 9.2. The Client shall indemnify and hold harmless the Company from and against all liabilities, claims, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses, suffered or incurred by the Company arising out of or in connection with (i) the Client's breach or negligent performance or non-performance of the terms of this Agreement; (ii) introduction by the Company of an Applicant to the Client; (iii) the hiring, firing or refusal to accept for hiring any Applicant introduced to the Client by the Company; or (iv) the Company's enforcement of these Terms.
- 9.3. Subject to Clause 9.1, the Company's total liability to the Client shall not exceed the Client's fee due under this Contract. The Company's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement

10. **Early termination between the parties**

- 10.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 10.1.1. The other party commits a material breach of any term of this agreement (if such breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
- 10.1.2. The other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.
- 10.2. If this Agreement is terminated in accordance with clause 10.1 above, the parties shall act in good faith to calculate a pro-rata amount of fees and charges that are payable by the Client to the Company. In any event, the Retainer Fee shall not be refunded.
- 10.3. It is at the absolute discretion of the Company should it wish to accept searches for employment on behalf of a Client. If prior to or during a search, the Company wishes to terminate this agreement, it can do so for convenience with 7 days' notice. No Introduction Fee will be payable unless an offer of Engagement or Engagement has been made under this agreement.

11. **Confidentiality**

- 11.1. Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 11.2
- 11.2. Each party may disclose the other party's confidential information:

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- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority

11.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. Data Protection

12.1. **The following definitions apply in this Clause 12:**

Agreed Purposes: The performance by each party of its obligations under this agreement.

Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications).

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

Shared Personal Data: the personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: identifiable data, contact information, financial data.

UK Data Protection 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.

This Clause 12 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.

12.2. This Clause 12 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.

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

12.4. Each party shall:

- (a) 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;

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(b) give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

(c) process the Shared Personal Data only for the Agreed Purposes;

(d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

(e) 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 agreement;

(f) 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.

Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

(a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;

(b) promptly inform the other party about the receipt of any data subject access request;

(c) provide the other party with reasonable assistance in complying with any data subject access request;

(d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

(e) 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;

(f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;

(g) 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 agreement unless required by law to store the personal data;

(h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

(i) maintain complete and accurate records and information to demonstrate its compliance with this Clause 12; and

(j) 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.

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12.5. Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

13. **No Partnership Or Agency**

13.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

13.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

14. **Variation**

14.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives)

15. **Force Majeure**

15.1. Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for more than 2 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

16. **Severance**

16.1. 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.

16.2. If any provision or part-provision of this agreement is deemed deleted under clause 16.1 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.

17. **Governing Law**

17.1. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

18. **Jurisdiction**

18.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.