



1. SCOPE OF THE AGREEMENT

These Terms of Business govern all services undertaken by STOPGAP LIMITED of Goodwin House, 5 Union Court, Richmond, TW9 1AA trading as Stopgap ("Stopgap") for the client (or any company within the same group of companies or affiliated businesses) (the "Client"). The appointment by the Client of Stopgap to locate candidates for you for permanent positions and to supply Freelance workers for Freelance positions shall be deemed to be acceptance of these Terms. In its services Stopgap is an Employment Business and Employment Agency, as defined in The Conduct of Employment Agencies and Employment Businesses Regulations 2003.

2. DEFINITIONS

2.1 In these Terms of Business the following definitions apply:

"Assignment Term" means the period set out in the Freelance Placement Confirmation Schedule during which a Freelance Worker is supplied by Stopgap to render Services to the Client.

"AWR" means The Agency Worker Regulations 2010 (as amended from time to time).

"Basic Working and Employment Conditions" means those terms and conditions that are ordinarily included in the contracts of comparable employees or workers of the Client, as further defined by Regulation 5 of the AWR.

"Candidate" means any individual Introduced to the Client.

"Client Site" means the place the Services are to be performed by the Freelance Worker as specified on the Freelance Placement Confirmation Schedule or as otherwise notified to the Freelance Worker.

"Engages/Engaged/Engagement" means the engagement, employment or use of a Candidate or a Freelance Worker directly by the Client or any third party or through any other employment business on a Permanent or Freelance basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Candidate or Freelance Worker is an officer or employee.

"Fees" means the fees calculated in accordance with the Fee Schedule and confirmed in a Freelance Placement Confirmation Schedule in respect of a Freelance Placement and in a Permanent Placement Confirmation Schedule in respect of a Permanent Placement.

"Fee Schedule" means the fee schedule of Stopgap's current fees for its services (as amended from time to time).

"Freelance Placement" means a placement for a Candidate as a Freelance Worker to provide Services for an Assignment Term via Stopgap subject to a contract for services.

"Freelance Placement Confirmation Schedule" means the written confirmation of the appointment of a Freelance Worker confirming the Services to be supplied to the Client by the Freelance Worker and the terms of such supply, which shall be signed by an authorised representative of each party.

"Freelance Worker" means the individual (whether operating through a limited company or not) set out in the Freelance Placement Confirmation Schedule who is introduced by Stopgap to render the Services to the Client. A Freelance Worker also includes an interim worker.

"Introduction" or "Introduce" means (i) the Client's interview of a Candidate in person or by telephone, following the Client's instruction to Stopgap to supply a Candidate; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Candidate; and which leads to an Engagement of that Candidate.

"Notice Period" means the notice period of two working days unless otherwise agreed in the Freelance Placement Confirmation Schedule.

"Permanent Placement" means a permanent placement for a Candidate as an employee of the Client (including Fixed Term Contracts).

"Permanent Placement Confirmation Schedule" means the written confirmation for a Permanent Placement confirming the appointment of a Candidate for a Permanent Placement, which shall be signed by an authorised representative of each party.

"Services" means any work and/or services to be performed by the Freelance Worker.

"Terms" means these Terms of Business.

3. THE CONTRACT

3.1 These Terms are the sole terms and conditions on which Stopgap shall introduce Candidates to the Client for Permanent Placements and Freelance Placements. These Terms are deemed to be accepted by the Client the earlier of either, its brief to Stopgap to search for Candidates or upon Stopgap passing any information about a Candidate to the Client.

3.2 On each occasion the Client wishes to Engage a Candidate for a Permanent Placement the parties shall agree the terms of a Permanent Placement Confirmation Schedule. The Client agrees to supply to Stopgap a copy of the offer letter sent to the Candidate as soon as reasonably practicably upon sending to the Candidate.

3.3 On each occasion the Client wishes to Engage a Candidate as a Freelance Worker for a Freelance Placement the parties shall agree the terms of a Freelance Placement Confirmation Schedule. By agreeing a Freelance Placement Confirmation Schedule, the parties shall have entered into an agreement for the supply of the Services which incorporates the provisions of these Terms save where they are expressly modified or varied in the Freelance Placement Confirmation Schedule. The Freelance Placement Confirmation Schedule and these Terms shall form the entire agreement between the parties with regard to the provision of the Services, to the exclusion of all other terms, including any which the Client requests or tries to present.

3.4 The Client shall advise Stopgap of any special matters about which Stopgap is required to inform the Candidate in relation to any requirements imposed by law or by any professional body, any special areas of expertise, training or qualifications required, and any associated Health and Safety risks which must be satisfied if the Candidate is to accept a Freelance Placement or a Permanent Placement.

3.5 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between Stopgap and the Client and are set out in writing and a copy of the varied terms is given to each party.

4. FEES

4.1 The Fees for each Permanent Placement and Freelance Placement shall be calculated in accordance with the Fee Schedule and confirmed in the applicable confirmation schedule.

Unless otherwise agreed in a Permanent Placement Confirmation Schedule the following provisions shall apply to the Fees payable for Permanent Placements:

4.2 All Fees for Permanent Placements shall be payable within 30 days of date of invoice. All invoices for Permanent Placements are raised on the start date of the Permanent Placement.

4.3 The Client shall be responsible for all payments to the Candidate and for making all the necessary statutory deductions.

4.4 Rebate for Permanent Placements:

In the event that a Permanent Placement terminates (whether by expiry of notice or otherwise) within three months of the date of commencement of the Permanent Placement ("the rebate period"), and provided:

(a) the Client notifies Stopgap in writing of the termination of the Permanent Placement within 3 days of such termination; and

(b) the Candidate has not previously either directly or indirectly been Engaged by the Client; and



(c) the termination is not due to redundancy, dismissal without just cause or the Candidate's ill health; and

(d) the Client had provided Stopgap with full and correct information in relation to the Permanent Placement and nothing has materially changed with regards to the Candidate's current or anticipated job role which would precipitate the Candidate choosing to leave or the Client determining that the Candidate is no longer suitable for the role; and

(e) all monies due from the Client have been paid in full under these Terms

then subject to the Free Replacement Option below, Stopgap shall pay the Client a rebate of 100% of the Placement Fee.

Free Replacement Option – Stopgap can, at its sole discretion, opt to endeavour to find a free replacement at no extra cost to the Client within six weeks. In the event that Stopgap is unable to find a free replacement within the six week period, then the Rebate detailed above shall be paid to the Client.

Unless otherwise agreed in a Freelance Placement Confirmation Schedule the following provisions shall apply to the Fees payable for Freelance Placements:

4.5 All Fees for freelance services shall be payable within 14 days of date of invoice. The Fees for Freelance Placements shall be invoiced to the Client on a weekly basis.

4.6 If Stopgap is paying the Freelance Worker through its own payroll system the Fees shall comprise of:

(a) The day rate of the Freelance Worker together with all applicable statutory charges including holiday pay allowance, Pension Auto enrolment costs, Employers' National Insurance and Apprenticeship Levy. All such statutory charges will be calculated at the prevailing statutory rate or at an enhanced rate as may be required as a result of AWR ;

(b) A payroll administration fee as a percentage of the Freelance Worker day rate plus all holiday pay allowances charged; and

(c) The Stopgap fee.

4.7 If Stopgap is paying the Freelance Worker through its own payroll system and the Freelance Worker is operating through a limited company the Fees shall comprise of:

(a) The day rate of the Freelance Worker – which shall incorporate all statutory charges required;

(b) The payroll administration fee which shall be calculated as a percentage of (a); and

(c) The Stopgap fee.

4.8 If the Client is paying the Freelance Worker through its own payroll system the Fees shall comprise of the Stopgap fee.

4.9 If a Freelance Placement is extended the Client acknowledges and agrees that the Fees shall be payable on each extension of the Assignment Term.

4.10 Stopgap will have the right to increase the Fee during a Freelance Placement and the Client will be obliged to pay an increased Fee or additional sums in the following circumstances:

(a) if any statutory legislation comes into force which affects the Fees, deductions, tax, payments or any statutory liability of Stopgap (including pursuant to the AWR);

(b) if in Stopgap's reasonable opinion any Freelance Worker is eligible for and/or has not received equivalent Basic Working and Employment Conditions (including without limitation any bonus, commission or other payment); or

(c) if a Freelance Worker is entitled to holiday over and above the statutory minimum as a result of AWR,

In the above circumstances Stopgap will notify the Client in writing of any increase in the Fee or additional payments due from the Client in order to meet its obligations.

4.11 VAT, if applicable, is payable on the entirety of the Fees.

4.12 Stopgap reserves the right to charge interest on any overdue amounts at the rate of 5% per annum above the base rate from time to time of Barclays Bank plc from the due date until the date of payment.

4.13 The Client agrees to pay any previously agreed travel or other expenses, including without limitation any advertising, artwork and production costs incurred by Stopgap.

5. FREELANCE PLACEMENTS

5.1 Stopgap shall procure that the Freelance Worker shall make themselves available to provide the Services for the Assignment Term at the Client Site.

5.2 The Client will provide and take responsibility for all equipment required in the provision of the Services at all times. The Client agrees to ensure that the Client Site is a safe, secure and suitable premises for the provision of the Services.

5.3 The Client will assist Stopgap in complying with Stopgap's duties under the Working Time Regulations by supplying any relevant information about the Services requested by Stopgap and the Client will not do anything to cause Stopgap to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Freelance Worker for more than 48 hours in any week, the Client must notify Stopgap of this requirement before the commencement of that week.

5.4 Stopgap shall enter into a contract with the Freelance Worker which shall provide that they will:

(a) provide the Services at all times to the best of their knowledge, power and ability;

(b) be available to provide the Services at the Client Site at the times agreed with the Client;

(c) comply in all respects with and have regard to all relevant statutory regulations, laws and orders and all codes of practice applicable to the Services; and

(d) comply with the Client Site rules and regulations and observe other similar instructions given by the Client or Stopgap.

5.5 At the end of each week of an Assignment Term the Client shall sign the Freelance Worker's timesheet verifying the number of hours worked by the Freelance Worker during that week.

5.6 Signature of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a timesheet produced for authentication by the Freelance Worker because the Client disputes the hours claimed, the Client shall inform Stopgap as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with Stopgap to enable Stopgap to establish what hours, if any, were worked by the Freelance Worker. Failure to sign the timesheet does not absolve the Client's obligation to pay the Fees in respect of the hours worked.

5.7 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the Services performed by the Freelance Worker.

5.8 When it has been agreed that a Freelance Worker is to be placed on Stopgap's payroll Stopgap assumes responsibility for paying the Freelance Worker.

5.9 The Client shall notify Stopgap immediately and without delay and in any event within 24 hours if the Freelance Worker fails to attend the Client Site or notifies the Client that the Freelance Worker is unable to provide the Services work for any reason.

5.10 Stopgap shall notify the Client within 14 days of it being notified by the Freelance Worker who is performing a Freelance Placement that she is pregnant. The Client will perform a risk assessment on such Freelance Worker and make any subsequent reasonable adjustments. If the Freelance Placement is



terminated as a result of the Freelance Worker's pregnancy and/or on maternity grounds, Stopgap will use its reasonable endeavours to find other suitable alternative work for such Freelance Worker. In the event that:

(a) such replacement work pays the Freelance Worker a lower remuneration than the terminated Freelance Placement, the additional cost of the difference in remuneration between the terminated Freelance Placement and the replacement work will be borne by the Client; or

(b) Stopgap cannot find suitable alternative work for such Freelance Worker, and such Freelance Worker is entitled to remuneration in accordance with Regulation 68C of the Employment Rights Act 1996, the Client will pay Stopgap the full amount of remuneration that such Freelance Worker is entitled to as a result of complying with Section 68C of the Employment Rights Act 1996 within 14 days of the Freelance Placement being terminated.

6. AWR

6.1 It shall be the responsibility of the Client and Stopgap to ensure that if the AWR apply to the Freelance Placement, the Freelance Worker benefits from the same Basic Working and Employment Conditions as the Freelance Worker would be entitled to had such Freelance Worker been recruited directly by the Client.

6.2 The Client agrees and acknowledges that:

(a) it shall provide accurate and up-to-date information to Stopgap on an ongoing basis in relation to the Basic Working and Employment Conditions of comparable employees of the Client so as to ensure that the remuneration paid by Stopgap to each Freelance Worker for each Freelance Placement complies with AWR;

(b) it shall complete and return Stopgap's Freelance Placement Confirmation Schedule, to the satisfaction of Stopgap and any other information requests as soon as reasonably practicable in order to ensure compliance with AWR;

(c) it shall promptly notify Stopgap upon any changes in the Basic Working and Employment Conditions (including without limitation any pay reviews, bonus payments or increased holidays); and

(d) in the event that the AWR apply to the Freelance Placement, it shall promptly pay to the Freelance Worker those bonus payments that the Freelance Worker is eligible for under AWR.

6.3 The Client agrees and acknowledges that it is responsible for providing the Freelance Workers with access to information regarding relevant employment vacancies and the collective facilities and amenities provided by the Client on an ongoing basis from the first day of the Freelance Placement.

6.4 The Client warrants and undertakes that it will not structure the Freelance Placements in a manner that prevents or attempts to prevent a Freelance Worker from being entitled to, or from continuing to be entitled to equivalent Basic Working and Employment Conditions, or which is prohibited under the AWR.

6.5 In the event that Stopgap receives a written request from a Freelance Worker in relation to the Client's compliance with the AWR, Stopgap shall promptly pass such request to the Client; whereupon the Client shall compile a written statement setting out in sufficient detail the information necessary to comply with the AWR and present such statement to Stopgap by the date determined by Stopgap or in the absence of such date, within 10 days of receipt of such request.

7. TRANSFER AND INTRODUCTION FEES

7.1 Where Stopgap receives instructions from the Client to act as an employment agency (to secure Candidates for Permanent Placements) and if there is an Introduction of a Candidate to the Client which does not result in the supply of that Candidate by Stopgap to the Client, but which leads to an Engagement of the Candidate by the Client within 12 months from the date of Introduction, the Client shall be liable to pay an introduction fee calculated as follows: if the Candidate is to be employed or engaged by the Client on an annual salary basis, the Client shall pay Stopgap the Fees that would have been payable in accordance with the Fee Schedule had the Candidate been supplied through Stopgap in respect of the Candidate's gross annual salary or in any other case of the gross annual equivalent to be paid by the Client to the relevant Candidate. No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

7.2 Where Stopgap receives instructions from the Client to act as an employment business (to secure Freelance Workers for Freelance Placements) and if there is an Introduction of a Candidate to the Client which does not result in the supply of that Candidate by Stopgap to the Client, but which leads to an Engagement of the Candidate by the Client either directly or pursuant to being supplied by another employment business within 12 months from the date of Introduction the Client shall be liable, subject to electing upon giving 30 days notice, to either:

(a) A period of hire of the Candidate being 12 months during which the Client shall pay the charges for each hour/day the Candidate is so employed or supplied; or

(b) An introduction fee calculated as follows: if the Candidate is to be employed or engaged by the Client on an annual salary basis, the Client shall pay Stopgap the Fees that would have been payable in accordance with the Fee Schedule had the Candidate been supplied through Stopgap in respect of the Candidate's gross annual salary or in any other case of the gross annual equivalent to be paid by the Client to the relevant Candidate. No refund of the introduction fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Client does not give notice (in accordance with (a) above) before the Candidate is engaged the parties agree that the introduction fee shall be due.

7.3 In the event of the Engagement by the Client, or by a third party introduced by the Client, of a Freelance Worker supplied by Stopgap for an Assignment either (1) directly or (2) pursuant to being supplied by another employment business, during the Assignment Term or within whichever is the longer of either:

(a) 14 weeks from the start of the first Assignment Term (each new Assignment Term where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment Term shall also be considered to be the 'first Assignment' for these purposes); or

(b) 8 weeks from the day after the last day the Freelance Worker provided the Services.

The client shall be liable, subject to electing by giving 30 days prior notice, to either:

(i) An extended period of hire of the Freelance Worker being 12 months during which the Client shall pay the current rate of Fees; or

(ii) A transfer fee calculated as follows: if the Freelance Worker is to be employed or engaged by the Client, or a third party introduced by the Client, on an annual salary basis, the Client shall pay Stopgap the Fees that would have been payable in accordance with the Fee Schedule in respect of the Freelance Worker's gross annual salary or in any other case of the gross annual equivalent to be paid by the Client to the relevant Freelance Worker prior to the transfer. No refund of the transfer fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due. However, where the Client does not give notice (in accordance with (i) above) before the Freelance Worker is Engaged the parties agree that the transfer fee (calculated in accordance with (ii) above) shall be due.

7.4 If the Client elects for a period of hire, as set out in clauses 7.2(a) or 7.3(i), but before the end of such period Engages the Freelance Worker supplied by Stopgap either directly or pursuant to being supplied by another employment business or the Freelance Worker chooses not to be supplied for the period of hire, the transfer or introduction fee calculated in accordance with either 7.2(b) or 7.3(ii) may be charged, reduced by such percentage to reflect any period of extended hire already undertaken by the Freelance Worker and paid for by the Client.

7.5 In the event that there is an Introduction of a Candidate to the Client which does not result in the supply of that Candidate by Stopgap to the Client, but the Candidate is introduced by the Client to a third party which results in the Engagement of the Candidate by the third party within 12 months from the date of Introduction the Client shall be liable, to an Introduction Fee calculated in accordance with clause 7.1.

8. LIABILITY

8.1 Whilst every effort is made by Stopgap to give a satisfactory service to the Client by ensuring reasonable standards of skills, integrity and reliability from Candidates and Freelance Workers and further to provide them in accordance with the Client's requirements, Stopgap is not liable for any loss, expense, damage or delay arising from any failure to provide any Candidate or Freelance Worker for all or part of the Assignment Term or from the negligence, dishonesty, misconduct or lack of skill of a Candidate or Freelance Worker. For the avoidance



of doubt, Stopgap does not exclude liability for death or personal injury arising from its own negligence.

8.2 Freelance Workers supplied by Stopgap are not the employees of Stopgap but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment Term. The Client agrees to be responsible for all acts, errors or omissions of the Freelance Worker, whether wilful, negligent or otherwise. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject.

8.3 The Client shall indemnify and keep indemnified Stopgap against any costs, claims or liabilities incurred by Stopgap arising out of any Freelance Placement or arising out of any breach of these Terms by the Client or arising out of the Client's failure to comply with the AWR or if the Freelance Worker is unfairly dismissed or subjected to a detriment by or as a result of any act or omission of the Client.

8.4 To the extent permitted by law Stopgap shall not be liable to the Client for:

(a) Loss of profit, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings; or

(b) Any indirect or consequential loss or damage.

8.5 To the extent permitted by law Stopgap's total liability to the Client for all the claims, costs, damage and losses under or in connection with each Permanent Placement or Freelance Placement made pursuant to these Terms shall be limited to the total margin paid by the Client to Stopgap in respect of each such placement to which the claim relates.

9. TERMINATION

9.1 Either party may terminate these Terms and/or any Freelance Placement immediately upon giving notice in writing to the other party if:

(a) an order is made or an effective resolution is passed for the winding up of that other party (other than for the purpose of restructuring) or a receiver, administration or administrative receiver is appointed over the undertaking or any of the property or assets of that other party; or

(b) the other commits any material or persistent breach of these Terms or a Freelance Placement.

9.2 Either party may terminate any Freelance Placement at any time on giving written notice of the Notice Period to the other party.

9.3 The Client may give two days' written notice to terminate a Freelance Placement if:

(a) The Freelance Worker refuses to perform the Services or in the reasonable opinion of the Client fails to perform the Services diligently and with due prudence, skill and care;

(b) The Client is on reasonable grounds dissatisfied with the level of technical skill and/or job performance used in the provision of the Services; or

(c) There is a material or persistent inability of the Freelance Worker to provide the Services to the standard reasonably required by the Client.

9.4 Stopgap may terminate a Freelance Placement at any time if the freelance worker in our sole opinion, which need not be reasonable, may no longer be willing or able to undertake the services to the Client.

9.5 Termination of these Terms and/or any Freelance Placement shall not release either party from any obligation accrued on or before termination of these Terms and/or any Freelance Placement.

10. INTELLECTUAL PROPERTY

10.1 Stopgap acknowledges that all intellectual property rights created during the performance of the Services by the Freelance Worker belong to the Client and Stopgap undertakes not to do any act inconsistent with such ownership.

11. CONFIDENTIALITY

11.1 Neither party shall at any time divulge or disclose to any person other than to officers or employees of the other party or on the instructions of the other party any Confidential Information concerning the other party.

For the purposes of this clause 11.1 "Confidential Information" shall include trade secrets, financing, affairs and trade connections, clients and information about any of the Client's information regarding prices, discounts, business and financial marketing development or any other confidential information.

11.2 The Client hereby grants Stopgap the right to:

(a) advertise any vacancies for potential Candidates in any medium;

(b) use its name and logo on its website, client list and in its promotional literature;

(c) divulge or otherwise disclose the Confidential Information (or any part thereof) in order to respond to any claim or proceedings pursuant to the AWR.

12. GENERAL

12.1 The failure by either party to enforce at any time any of these Terms shall not be a waiver of them or of the right to subsequently enforce all terms and conditions of these Terms.

12.2 The assignment of these Terms by a party shall require the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

12.3 If any of these Terms is held to be unenforceable in all or in part, that term or provision shall to the extent be deemed not to form part of these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.

12.4 Stopgap shall not be liable for any delay or non-performance of its obligations under these Terms to the extent that such delay or non-performance is caused by Force Majeure Event. For the purposes of these Terms "Force Majeure Event" shall mean any event beyond the reasonable control of Stopgap including without limitation, fire, floods, storms, earthquakes, natural physical disasters, acts of war, acts of terrorism or threats of, or industrial action or acts of government.

12.5 Any notice under these Terms shall be made in writing. Notices may be sent by post, fax or email. Any notice served by post shall be deemed to have been served 48 hours after it was posted and proof that the notice was properly addressed, pre-paid and posted shall be sufficient evidence of service. Any notice served by fax shall be deemed to have been received on transmission as evidenced by the transmission report. Correctly addressed emails shall be deemed to be received in despatch, as evidenced by hardcopy printouts.

12.6 A person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms but this does not affect any right of the Freelance Worker to enforce any provision of these Terms against the Client.

12.7 These Terms are governed by and shall be construed in accordance with the laws of England and Wales. The parties hereby submit any dispute (including non-contractual disputes) or matter in relation to these Terms to the exclusive jurisdiction of the English Courts.