



## TERMS AND CONDITIONS – PERMANENT AND CONTRACT STAFF

### 1. DEFINITIONS

1.1. In these Terms of Business, the following definitions apply:

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| “Applicant”    | means the person introduced by the Agency to the Client for an Engagement including any officer or employee of the Applicant if the Applicant is a limited company and members of the Agency’s own staff,                                                                                                                                                                                                                                                                          |
| “Client”       | means the person; firm or corporate body together with any subsidiary or associated Company as defined by the Companies Act 1985 to which the Applicant is introduced;                                                                                                                                                                                                                                                                                                             |
| “Agency”       | means <b>LeviCare Limited of Brulimar House, Jubilee Road, Middleton, Manchester. M24 2LX. Registered in England. Company number 11591420</b>                                                                                                                                                                                                                                                                                                                                      |
| “Engagement”   | means the engagement, employment or use of the Applicant by the Client or any third party on a permanent or temporary basis, whether under a contract or service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Applicant is an officer or employee                                                                                                                    |
| “Introduction” | means (i) the Client’s interview of an Applicant in person or by telephone, following the Client’s instruction to the Agency to search for an Applicant; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Applicant; and which leads to an Engagement of that Applicant;                                                                                                                                                                |
| “Remuneration” | includes 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 Applicant for services rendered to or on behalf of the Client. Where the Client provides a company car, a notional amount of £1000 will be added to the salary in order to calculate the Agency’s fee. |

1.2. Unless the context requires otherwise, references to the singular include the plural.

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

### 2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Agency and the Client and are deemed to be accepted by the Client by virtue of an introduction to, or the Engagement of an Applicant or the passing of any information about the Applicant to any third party following an Introduction.
- 2.2. These terms contain the entire agreement between the parties unless otherwise agreed in writing by a director of the Agency, these Terms of Business prevail over any other terms of business or purchase conditions put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency and the Client 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.

### 3. NOTIFICATIONS AND FEES

3.1. The Client agrees:

- a) To notify the Agency immediately of any offer of an Engagement which it makes to the Applicant;

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- b) To notify the Agency immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the Remuneration to the Agency; and
  - c) To pay the Agency's fee LeviCare Limited of Brulimar House, Jubilee Road, Middleton, Manchester. M24 2LX.
  - d) For the avoidance of doubt, all invoicing raised to the client has been legally assigned to LeviCare Limited and should be paid only to LeviCare Limited within the credit terms of the invoice.
- 3.2. Except in the circumstances set out in clause 5.1 below, no fee is incurred by the Client until the Applicant commences the Engagement when the Agency will render an invoice to the Client for its fees.
- 3.3. The Agency reserves the right to charge interest on invoiced amounts unpaid for more than the agreed credit Terms in accordance with 'The Late Payment of Commercial Debt (Interest) Act 1998'.
- 3.4. The fee payable to the Agency by the Client for an introduction resulting in an Engagement is calculated in accordance with the following Fee Structure on the Remuneration applicable during the first 12 months of the Engagement. VAT will be charged on the fee if applicable.
- Remuneration % Fee**
- £10,000 - £14,999 – 15%
  - £15,000 - £24,999 15%
  - £25,000 - £49,999 20%
  - £50,000 - £99,999 – 25%
  - £100,000 plus – 35%
- 3.5. In the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.4 will apply pro rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Applicant within 12 calendar months from the date of termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is the sooner.
- 3.6. If the Client subsequently engages or re-engages the Applicant within the period of 12 calendar months from the date of termination of the Engagement or withdrawal of the offer, a full fee calculated in accordance with clause 3.4 above becomes payable.
- 3.7. The Client acknowledges that they are responsible for paying the tax, national insurance and any other tax, charge, or levy required by HMRC or any other government body because of the employee's employment during the course of the engagement and will reimburse the Agency for any charge or loss incurred by them as a result of a demand by HMRC or another government body within 14 days of a demand being issued by the Agency to the Client.

#### 4. REPLACEMENT/REFUNDS

**It is a condition precedent to any post Engagement benefit, such as refunds, or any other form of warranty mentioned in or otherwise inferred from these Terms of Business, that any payments due under this Agreement are paid on time and in full to the Agency.**

In the event that the Client does not require the Agency to locate a Replacement the Agency may Refund the amounts detailed in clause 4.7 to the Client.

**In order to qualify for a Refund all the conditions at clauses 4.1 to 4.6 must be met:**

- 4.1 The Client must pay the Agency's fee within the credit terms of the invoice.
- 4.2 The Engagement is terminated by the Applicant or by the Applicant's death or by the Client within 12 weeks from the date of Engagement.
- 4.3 The Client must notify the Agency in writing of the termination of the Engagement within 7 days of its termination.

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- 4.4 Neither the Client nor any subsidiary nor associated company nor person shall engage the Applicant within 12 months of the termination of the Engagement.
- 4.5 The termination is not due to redundancy and the Client does not owe any other overdue sums to the Agency.
- 4.6 The following scale of refund only applies in the event that the Client complies with the provisions of clause 3.1 of these Terms of Business.
- 4.7 Where the Applicant leaves during the first 12 weeks of the Engagement, a partial 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 4.1.

| Week in which the candidate leaves | 1-2 | 3-4 | 5-6 | 7-8 | 9-10 | 11-12 |
|------------------------------------|-----|-----|-----|-----|------|-------|
| % of introduction fee refunded     | 70% | 60% | 50% | 30% | 15%  | 10%   |

- 4.8 There will be no refund where the Applicant leaves after the 13<sup>th</sup> week of the Engagement.
- 4.9 In these Terms of Business, a Refund means a sum to be refunded by the Agency to the Client in certain circumstances to discount future invoices raised to the Client.
- 4.10 Irrespective to any proven or claimed right to a Refund, all invoices must be paid within their credit terms to the Agency and there is no right to set off any proven or claimed right to a Refund.
- 4.11 The Client must pay the Agency's fee within the credit terms of the invoice. If any payment is not received within the credit terms, no Refund shall be given.
- 4.12 There will be no rebates or refunds where one-off specials or bespoke fees have been applied. A single replacement offer is provided on the basis that the candidate leaves on their own accord within the 12 weeks of engagement. Clauses 4.1, 4.2 and 4.11 will apply.

## 5. CANCELLATION FEE

- 5.1 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, The Client shall be liable to pay the Agency a minimum fee of £3000.00.

## 6. INTRODUCTIONS

- 6.1 Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Agency which results in an Engagement with that third party within 12 months of the introduction renders the Client liable to pay the Agency's fees as set out in clause 3.4 with no entitlement to any refund.
- 6.2 An introduction fee calculated in accordance with clause 3.4 will be charged in relation to any Applicant engaged as a consequence of or resulting from an introduction by or through the Agency, whether direct or indirect, within 12 months from the date of the agency's introduction.
- 6.3 In the event that any employee of the Agency with whom the Client has had personal dealings accepts an Engagement with the Client within (12) months of leaving the Agency's employment, the Client shall be liable to pay an introduction fee to the Agency in accordance with clause. 3.4.)

## 7. SUITABILITY AND REFERENCES

- 7.1 The agency endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant has the experience, training, qualifications and any authorisation

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which the Client considers necessary or which may be required by law or by any professional body for the assignment, and that the Applicant is willing to work in the position which the Client seeks to fill.

- 7.2. At the same time as proposing an Applicant to the Client the Agency shall inform the Client of such matters in Clause 7.1. as they have obtained confirmation of. 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 (excepting Saturday, Sunday and any public or Bank holiday) except where the Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the client.
- 7.3. The Agency endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 7.4. The Agency endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Application for the Applicant to work in the position which the Client seeks to fill.
- 7.5. Notwithstanding clauses 7.1, 7.2, 7.3 and 7.4 above the Client must satisfy itself as to the suitability of the Applicant and the Client shall take up and review any references provided by the Applicant or the Agency before engaging the Applicant. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigation into the medical history of any Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.
- 7.6. To enable the Agency to comply with its obligations under clauses 7.1, 7.2, and 7.3 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition, the Client shall provide details of the date the client requires the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Applicant would be entitled to give and receive to terminate the employment with the Client.

## **8. SPECIAL SITUATIONS**

- 8.1 Where the Applicant is required by law or any professional body to have qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring or attending to one or more persons under the age of eighteen, or any person who by reason of age, infirmly or who is otherwise in need of care or attention, the Agency will take all reasonably practicable steps to obtain and provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If the Agency is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

## **9. CONFIDENTIALITY**

- 9.1 Both parties undertake that each shall not, at any time during this Agreement, and for a period of 5 years after termination of this Agreement, disclose to any person any In-put Material (in the case of Levi Care Limited Pre-existing Material (in the case of the Customer), technical or commercial know-how, specifications, inventions,

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processes, or initiatives which are of a confidential nature, or any other confidential information concerning the disclosing party's business or its products which the receiving party may obtain in connection with entering into this Agreement, except as permitted by clause 9.2.

- 9.2 Both parties may disclose Confidential Information:
- a) To its employees, agents, consultants, or subcontractors (and in the case of Levi Care Limited, Levi Care Limited's Team) as is needed for the purpose of discharging its obligations under this Agreement. The party in receipt of such information shall ensure that its employees, agents, consultants, or subcontractors to whom it discloses the Confidential Information, comply with this clause 9.
  - b) As may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 9.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.
- 9.4 All materials, equipment and tools, drawings, specifications, and data supplied by one party to the other, shall at all times be (and remain) the exclusive property of the party supplying such materials, equipment and tools, drawings, specifications, and data, but shall be held by the receiving party in safe custody at its own risk, and maintained and kept in good condition by that party until returned to the supplying party, and shall not be disposed of or used, or than in accordance with any written instruction or authorisation.

## 10. LIMITATION OF LIABILITY

- 10.1 Levi Care Limited's total liability under or in connection with this Agreement shall be limited to the greater of:
- a) 150% the total value of this Agreement; or
  - b) £50,000.
- 10.2 This limit shall apply howsoever that liability arises, including, and without limitation, a liability arising by breach of contract, arising by tort (including, and without limitation, the tort of negligence), or arising by breach of statutory duty.
- 10.3 Nothing within this clause shall exclude or limit liability for:
- a) Death or personal injury caused by negligence.
  - b) Fraud or fraudulent misrepresentation.
- 10.4 Levi Care Limited will not be liable to the Customer, whether in contract, tort, or restitution, or breach of statutory duty, or otherwise, for any:
- a) Loss of profit.
  - b) Loss of goodwill.
  - c) Loss of business.
  - d) Loss of business opportunity.
  - e) Loss of anticipated saving.
  - f) Loss of corruption of data or information.
  - g) Loss of contracts.
  - h) Loss of use of money.
  - i) Loss of actual savings.
  - j) Loss of revenue.
  - k) Loss of reputation.
  - l) Ex gratia payments.
  - m) Loss of operation time.
  - n) Loss of opportunity.
  - o) Special, indirect, or consequential damage or loss suffered by the Client, arising under or in connection with this Agreement.
- 10.5 Nothing in this Agreement shall or shall not be deemed to relieve the Client of any common law duty to mitigate any loss or damaged incurred by them.

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## **11. FORCE MAJURE**

- 11.1 A Force Majeure Event is any circumstance not within a party's reasonable control. This includes, without limitation:
- a) Acts of God such as flood, drought, earthquake, tsunami, or other natural disaster, epidemic, or pandemic.
  - b) War, or threat of or preparation for war (including terrorist attack, armed conflict, civil war, civil commotion, or riots).
  - c) Imposition of sanctions.
  - d) Nuclear, chemical, or biological contamination.
  - e) Sonic boom.
  - f) Fire, explosion, or accident (including collapse of building).
  - g) Interruption or failure of utility services.
- 11.2 Provided it has complied with this clause 11, if a party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the affected party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 11.3 The corresponding obligations of the other party will be suspended and its time for performance of such obligations shall be extended to the same extent as those of the affected party.
- 11.4 The affected party shall as soon as reasonably practicable after the start of the Force Majeure Event, but no later than 7 Business Days from its start, notify the other party in writing of the event, the date on which it started, its likely or potential duration, and the effect of the event on the ability to perform any obligations under this Agreement, and use reasonable endeavours to mitigate the effect of the event on performance of their obligations under this Agreement.

## **12. NOTICES**

- 12.1 Any notice or other communication given to a party in connection with this Agreement shall be in writing, and
- a) Delivered either by hand, by pre-paid first-class post, or by other next working day delivery service at the receiving party's postal address provided in this Agreement unless otherwise stated; or
  - b) Sent by email to the email address specified in writing as being a suitable address for service.
- 12.2 Any notice or communication shall be deemed to have been received:
- a) If delivered by hand, at the time the notice is left at the proper address.
  - b) If sent by pre-paid first-class post, or by other next working day delivery service, at 9am on the second Business Day after posting.
  - c) If sent by email, at the time of transmission, or if this time falls outside of Business Hours, when Business Hours resume.
- 12.3 This clause 12 does not apply to the service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

## **13. SEVERANCE**

- 13.1 If any provision or part provision of this Agreement becomes invalid, illegal, or unenforceable, this shall not affect the validity and enforceability of the rest of this Agreement.

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13.2 If it comes to the attention of either party that any provision or part provision of this Agreement is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid, and enforceable.

#### **14. LAW**

14.1 These Terms are governed by the law of England and are subject to the exclusive jurisdiction of the courts of England.

**Signed for and on behalf of the Client:**

**Name & Position:**

**Dated:**

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