

 the Manchester Growth Company

Temporary Staff Agency Framework

Document D
Contract Terms for Agency supply
services

May 2016



Contract Terms

THIS AGREEMENT is dated [DATE] AND IS MADE BETWEEN

[FULL COMPANY NAME] (incorporated and registered in England and Wales with company number [NUMBER]) whose registered office is at [REGISTERED OFFICE ADDRESS] (“the MGC Group company”)

[FULL COMPANY NAME] (incorporated and registered in England and Wales with company number [NUMBER]) whose registered office is at [REGISTERED OFFICE ADDRESS] (“the Agency”)

INTERPRETATION

“Actual Vacancies”	means the vacant positions as the MGC Group informs the Agency from time to time in accordance with this agreement.
“Conduct Regulations 2003”	means the Conduct of Employment Agencies and Employment Business Regulations 2003 (SI 2003/3319).
“Data Controller”	shall have the meaning set out in the Data Protection Act 1988.
“Data Processor”	shall have the meaning set out in the Data Protection Act 1988.
“Engage”	means the employment of an applicant as a direct result of any introduction to or temporary assignment undertaken by an applicant in the MGC Group by the Agency and the terms Engaged or Engagement shall be construed accordingly.
“MGC”	means The Manchester Growth Company which is a trading name of Economic Solutions Limited, whose registered address is at Lee House, 90 Great Bridgewater Street, Manchester, M1 5JW and whose company number is 02443911.
“MGC Group”	means (i) any company within the MGC Group and (ii) Manchester Investment and Development Agency Service Limited whose registered address is at Po Box 532 Room 307, Manchester Town Hall Albert Square, Manchester, Greater Manchester, M60 2LA and whose company number is 3323710 (iii) Commission for the New Economy Limited whose registered address is at Manchester Professional Service Limited Manchester Town Hall Room 311, Albert Square Po Box 532, Manchester, Greater Manchester, M60 2LA and

	whose company number is 5678007
“Personal Data”	has the same meaning as in sections 1(1) and 2 of the Data Protection Act 1998;
“Process(ing)”	shall have the meaning set out in the Data Protection Act 1998.
“Relevant Period”	shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

AGREED TERMS

- 1.1 These terms are deemed to be accepted by the Agency by virtue of a submission of a tender under an MGC Invitation to Tender [DATE] (ITT).
- 1.2 These terms together with the documentation listed in the ITT contain the entire agreement between the parties and unless otherwise agreed in writing by a director of MGC, these terms of business prevail over any other terms of business or purchase conditions put forward by the Agency.
- 1.3 No variation or alteration to these terms shall be valid unless the details of such variation are agreed between MGC and the Agency and are set out in writing and a copy of the varied terms is provided stating the date on or after which such varied terms shall apply.
- 1.4 Where reference is made to “writing or written” this includes faxes and e-mail save where expressly stated to the contrary.
- 1.5 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representative, successors and permitted assigns.
- 1.7 The schedule(s) form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedule(s).
- 1.8 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

- 1.11 A reference to a statute or statutory provision is a reference to it as it is in force or the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.12 Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

AGENCY OBLIGATIONS

- 2.1 The Agency agrees on a non-exclusive basis to search, for applicants for the MGC Group who meet the minimum qualifications and other criteria for the Actual Vacancies.
- 2.2 The Agency shall only take instructions from the recruiting/hiring manager within the relevant MGC Group company or a representative of HR.
- 2.3 The Agency agrees that it shall not provide any information about applicants, by any means, to any other company or staff of the MGC Group, without the express prior written authorisation of a representative of the relevant MGC Group company. Without prejudice to any other provision of this agreement, the Agency shall accurately and promptly complete and otherwise process and provide information in accordance with such ordering and other monitoring, invoicing or reporting systems (including any IT platforms or programs) which MGC may from time to time designate. If the Agency does not comply wholly with this clause, the MGC Group shall not be liable to pay any fees relating to any appointment by them arising from the unauthorised contact or referral.
- 2.4 The Agency agrees to screen all applicants and introduce to the MGC Group only applicants who meet the minimum criteria for the position as set out by the relevant MGC Group company in accordance with clause 2.6 and wish to work the positions for which they are introduced. The Agency will only introduce applicants who have the right to work in the UK and, in particular, the Agency shall comply with the Immigration Asylum and Nationality Act 2006 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers.
- 2.5 Prior to the commencement of the assignment, the Agency will send the relevant MGC Group company written confirmation of:
 - (a) the identity of the applicant;
 - (b) the applicant's experience, training, qualifications and authorisations necessary for the assignment or may be required by law or any professional body;
 - (c) the applicant's willingness to carry out the assignment;
 - (d) the hourly rate charged by the Agency in accordance with clause 20.2 (where applicable) or the fees for the introduction of an applicant for a permanent post (where applicable);
 - (e) any notice period to terminate the contract; and
 - (f) the intervals at which invoices shall be rendered to the relevant MGC Group company by the Agency.

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 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 relevant MGC Group company.

- 2.6 The Agency will endeavour to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the MGC Group or the applicant for the applicant to work in the position which the MGC Group seeks to fill.
- 2.7 The Agency agrees that it will not during the term of this agreement and for three months following its termination (however caused) solicit any person currently assigned to a temporary post within or Engaged by the MGC Group and who has in the previous 12 months been introduced by the Agency to the MGC Group companies for employment by another person or by itself, except for by way of a public advertisement placed by the Agency or its other clients as part of a bona fide search.
- 2.8 The parties shall conduct meetings regularly to review the services provided by the Agency. Any resulting changes agreed to the services, remuneration or any other aspect of the agreement shall be confirmed in writing by a director of MGC (see clause 1.2). Otherwise, the previous arrangements shall apply.

THE MGC'S OBLIGATIONS

- 3.1 When making a request for the provision of an applicant to perform certain services ("the Assignment"), the relevant MGC Group company will give the Agency details of:
 - (a) the date on which the MGC Group company requires the applicant to commence work and the duration, or likely duration, of the work;
 - (b) the position which the MGC Group company seeks to fill, including the type of work the applicant in that position would be required to do, the location at which, and the hours during which, the applicant would be required to work, and any risk to health or safety known to the MGC Group company and what steps they have taken to prevent or control such risks;
 - (c) the experience, training, qualifications and any authorisation which the MGC Group company considers 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;
 - (d) 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 MGC Group company; and
 - (e) any information reasonably required by the Agency in order for it to fulfil its obligations under the Agency Worker Regulations 2010.
- 3.2 No fee is incurred by an MGC Group company unless and until the applicant (in the case of a temporary appointment) commences the assignment or (in the case of a permanent appointment) the applicant accepts an offer of employment with the relevant MGC Group company when the Agency may (subject always to the provisions of clause 4 below) render an invoice to the relevant MGC Group company for its applicable fees (if any).

UNSUITABILITY AND ASSIGNMENTS

- 4.1 The Agency shall notify the relevant MGC Group company immediately if it believes that any applicant is unsuitable for the assignment or becomes aware of any matter that indicates that an applicant may be unsuitable for the assignment or is inconsistent with any information previously provided including where an applicant ceases to have the appropriate skills, approvals or a right to work in the United Kingdom or where this agreement may be or has been breached.
- 4.2 If the MGC Group company decides that an applicant is unsuitable to perform the assignment then the MGC Group company shall notify the Agency in writing of that fact giving the grounds for its dissatisfaction with the unsatisfactory applicant.
- 4.3 The relevant MGC Group company reserves the right to change its requirements at any time before the commencement of the assignment without any liability of that MGC Group company to the Agency whatsoever, save for the payment of fees due and payable for services already performed. Such cancellation or amendment shall be effective immediately upon the giving by the MGC Group company of notice to the Agency (which may be given by telephone, e-mail or in writing).
- 4.4 Where an MGC Group company decides (in accordance with clause 5.3 a) to have the applicant supplied by the Agency for an Extended Assignment:
- (a) the applicant fees payable by that MGC Group company during the Extended Assignment shall be those applicable immediately before the Agency received the MGC Group company's notice of election;
 - (b) at the end of the Extended Assignment, the MGC Group company may Engage the applicant without paying any introduction fee where the extended period is above 12 weeks; and
 - (c) if the MGC Group company chooses an Extended Assignment, but engages the applicant before the end of the Extended Assignment, the introduction fee may be charged by the Agency, reduced proportionately to reflect the amount of the Extended Assignment paid for by that MGC Group company.

FEES AND VAT

- 5.1 Where applicable, the Agency shall charge VAT to the relevant MGC Group company, at the prevailing rate.
- 5.2 Subject to clauses 5.3 and 5.4 below if following the supply of an applicant the Agency to an MGC Group company within the Relevant Period that MGC Group company Engages the applicant, the company will pay the Agency the introduction fee at the rate set out in Schedule 3.
- 5.3 The said introduction fee will not be payable if:
- (a) the MGC Group company gives or has given written notice to the Agency that it intends to continue the hire of the applicant for a further period of three months (Extended Assignment) in which case the provisions of 4.4 above shall apply; or

- (b) the applicant applied for a vacancy in response to an advertisement for an alternative company or role within the MGC Group.

5.4 If the MGC Group company notifies the Agency of an unsatisfactory applicant in accordance with the above clause:

- (a) within 48 hours of the commencement of the assignment, then the assignment will immediately terminate and no fees shall be payable, and
- (b) in all other cases the assignment shall terminate at the end of the day on which the Agency was notified, and fees shall be payable up to the date of such termination Or
- (c) Where permanent staff have commenced employment and deemed to be unsatisfactory the MGC Group company will be charged in accordance with the below repayment chart:

Up to 1 week	No charge applicable
1 week to 1 month	25% of charge applicable
1 month to 2 months	50% of charge applicable
2 months to 3 months	75% of charge applicable

5.5 Subject to clause 5.2, 5.3 and 5.4 above, the relevant MGC Group company will pay the Agency fees set out in Schedule 3 in respect of applicants. The fees will be the Agency's total amount (including VAT) for the placement of applicants with the MGC Group for both permanent and temporary roles within the MGC Group.

TERM

- 6.1 This agreement shall commence on **[DATE]** ("the Commencement Date") and shall continue for a period of two (2) years unless extended or terminated early in accordance with its terms.
- 6.2 MGC may extend the agreement beyond the period set out clause 6.1 above by a further 12 month period on providing the Agency with at least 3 months prior written notice to that effect.
- 6.3 MGC or the Agency may terminate this agreement at any time by providing the other with 60 Business Days' prior written notice.
- 6.4 If an MGC Group company requires an applicant to complete an assignment after the termination of this agreement and/or if an MGC Group company wishes to extend an applicant's assignment beyond the termination of this agreement the Agency shall agree to supply the applicant to the MGC Group company for the period requested by the MGC Group company on the same fees that applied prior to termination of this agreement.
- 6.5 Following the termination of the contract should the MGC Group company determine to utilise an Agency for the provision of either temporary or permanent staff then the terms will be

agreed at that time unless the terms of this contract have been extended for a further agreed period.

DEFAULT AND EARLY TERMINATION

- 7.1 MGC may terminate this agreement immediately on giving notice in writing to the Agency if:
- (a) the Agency commits any material breach of this agreement (repeated failure by the Agency to fulfil any service levels agreed between the parties (including any KPIs) or comply with this agreement generally will amount to a material breach) and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within ten business days after receiving a written notice of the breach requiring the breach to be remedied within such period; or
 - (b) the Agency becomes insolvent, is unable to pay its debts, ceases to trade, has a receiver appointed over the whole or any part of its assets, has an administrator appointed, enters into any composition with creditors generally, is wound up or any step is taken towards any of these events.
- 7.2 Any termination of this agreement however caused shall not affect:
- (a) any rights or liabilities which have accrued before the time of termination; or
 - (b) the continuance in force of any provision of this agreement which expressly or by implication is intended to come into or continue in force after termination.

ANNOUNCEMENTS

- 8.1 MGC and the Agency shall ensure that, except as may be required by law or any regulatory authority, neither it nor any of its group companies, employees, agents or contractors (or any tier) shall make, or cause to be made, (whether to the employees, customers, suppliers, public, press or otherwise) any communication, media statement, announcement or other disclosure whatsoever, whether written or oral, about the other party to this agreement, the existence of this agreement or any matter referred to in this agreement without the other party's prior written consent to its contents.

AUDIT AND RECORD KEEPING

- 9.1 The Agency shall keep and maintain until [six years] after the agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including, in particular:
- (a) the services provided by the Agency under this agreement;
 - (b) all expenditure reimbursed by each MGC Group company;
 - (c) all payments made by the MGC Group;
 - (d) the terms on which it or any sub-contractors engage any applicants; and
 - (e) the screening undertaken on any applicants.

- 9.2 The Agency shall on request provide the MGC Group or their representatives such access, on reasonable notice and within normal working hours, to those records as may be reasonably required in connection with this agreement.

INDEMNITIES AND INSURANCE

- 10.1 During and after this agreement, the Agency agrees to protect, indemnify, defend and hold harmless the MGC Group and any successor to any MGC Group company, and to the extent required from time to time by the MGC Group company, (or their successors) its officers, agents, and employees, from and against any and all expenses, damages, claims (whether valid or invalid and whether deemed alleged or upheld), suits, losses, actions, judgments, liabilities, and costs whatsoever (including legal fees on a full indemnity basis) (Indemnify) arising out of, connected with, or resulting from, the Agency's negligence, misrepresentation or the breach of any obligation to be performed by the Agency under this agreement.

- 10.2 The Agency will provide to MGC on a monthly basis:

- (a) the number of applicants currently being supplied to the MGC Group;
- (b) the individual companies within the MGC Group in which those applicants are working; and
- (c) the type of work those applicants are carrying out;
- (d) the number of applicants put forward for permanent roles;
- (e) the number of applicants appointed to permanent roles within the MGC Group

together with any other information which MGC may reasonably request in relation to any payments made by the Agency, its sub-contractors or any other intermediaries to any applicants, in order to ensure compliance with the Agency Worker Regulations 2010 (for temporary (ad hoc) posts only).

- 10.3 During the term of this agreement (and for a period of 6 years thereafter), the Agency shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £1 million and shall on MGC's request, produce both the insurance certificate giving details of the cover and the receipt for the current year's premium.

- 10.4 The provisions of this clause 10 shall survive termination of this agreement.

CONFIDENTIALITY

- 11.1 No party shall during and after termination of this agreement, without the prior written consent of the relevant party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature.
- 11.2 Each party shall on demand and on termination of this agreement surrender to the other all materials relating to such confidential information in its or its personnel's agent or representatives' possession.

DATA PROTECTION

- 12.1 The Agency acknowledges that the relevant MGC Group company is the Data Controller and places great emphasis on confidentiality, integrity and availability of information and personal data. The relevant MGC Group Company alone shall determine the purposes for which and the manner in which personal data is held or is to be processed.
- 12.2 Neither party shall do any act that puts the other party in breach of its obligations set out in this clause 12 and nothing in this agreement shall be deemed to prevent any party from taking the steps it deems necessary to comply with the Data Protection Act 1998 or other relevant data protection legislation or regulatory provisions.
- 12.3 The Agency shall:
- (a) at all times comply with obligations equivalent to the obligations of a Data Controller under the provisions of the Seventh Data Protection Principle in the Data Protection Act 1998 and shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. When considering what measure is appropriate, the Agency shall have regard to the state of good practice, technical development and the cost of implementing any measures to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss or destruction, and to the nature of the data to be protected;
 - (b) at all times process the personal data solely in accordance with the MGC Group company's written instructions from time to time;
 - (c) provide a written description of the technical and organisational methods employed by the Agency for processing personal data (within the timescales required by the MGC Group company).
 - (d) ensure the reliability of its personnel by vetting staff appropriately who have access to the personal data;
 - (e) not transfer the personal data outside the European Economic Area without the MGC Group company's prior written consent;
 - (f) permit an MGC Group company representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Agency's data processing activities (and/or those of its agents and approved sub-contractors) and comply with all reasonable requests or directions by the MGC Group company to enable it to verify and/or procure that the Agency is in full compliance with its obligations under this condition.
 - (g) comply with security standards BS 10012, ISO/IEC27002 and ISO/IEC27001 (the Standards) and shall carry out regular security audits as may be required by the British Standards Institute to ensure compliance and shall, on request, provide copies of the reports of such audits to the MGC Group company. If such audits show any non-compliance, the Agency shall remedy such breaches of the Standards forthwith at its own expense.
 - (h) immediately inform the MGC Group company of any breach of this clause.
- 12.4 Each party shall notify the other immediately if they become aware of any actual, threatened or potential breach of security of the personal data. The Agency shall, if a breach of security occurs, immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the personal data against any breach or threat; and
- (b) prevent an equivalent breach in the future.

- 12.5 Such steps shall include any action or changes reasonably required by the MGC Group company. If such action is taken in response to a breach that is determined by the MGC Group company acting reasonably not to be covered by the obligations of the Agency under this agreement, then the parties shall agree a variation to the agreement.
- 12.6 As soon as reasonably practicable the Agency shall provide to the MGC Group company with full details (using such reporting mechanisms as may be specified by the MGC Group company from time to time) of any actual, potential or threatened breach and the steps taken by the Agency in respect of such breach.
- 12.7 The Agency agrees to enter into and The MGC data processing agreement if required by The MGC. Such agreement shall form part of this contract and shall apply between the Agency and the relevant Group company.
- 12.8 This clause 12 shall survive the termination of the agreement, however arising.

WARRANTIES AND UNDERTAKINGS

- 13.1 The Agency warrants that it has the necessary expertise to provide the services contemplated in this agreement and will perform them in keeping with the highest professional business standards by using appropriately qualified, experienced and trained personnel.
- 13.2 The Agency warrants that it does and it shall comply with the all relevant statutes, laws, regulations and codes of practice from time to time in force in the relevant territory.
- 13.3 Each party warrants that it has full capacity and authority to enter into and perform this agreement.

ASSIGNMENT AND SUB-CONTRACTING

- 14.1 The Agency shall not, without the prior written consent of MGC, assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with this agreement or any of its rights and obligations under or arising out of this agreement (or any document referred to in it), or purport to do any of the same.
- 14.2 The Agency shall not sub-contract or delegate in any manner any or all of its obligations under this agreement to any third party or agent without the prior written consent of MGC. It shall be a condition of such consent that the sub-contractor signs and observes an agreement containing terms at least as onerous as those contained in this agreement. Without prejudice to this clause, the Agency shall in all cases retain sole responsibility for the performance of the tasks assigned to it under this agreement, regardless of the use of

authorised or unauthorised sub-contractors and the Agency shall be liable for the acts and omissions of any sub-contractor (of any tier and authorised and unauthorised) or any intermediaries whatsoever as if they were the acts and omissions of the Agency itself.

- 14.3 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

ENTIRE AGREEMENT

- 15.1 This agreement and the related ITT and ancillary documents referred to therein constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- 15.3 No variation of this agreement shall be effective unless it is in writing and signed by MGC and the Agency (or their authorised representatives).
- 15.4 Schedules 1 and 2 attached to this contract contain clauses specific to either temporary (ad hoc) posts only and/or permanent posts only.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 16.1 A person who is not a party to this agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

LAW AND JURISDICTION

- 17.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

FORCE MAJEURE

18.1 Either party may defer the date for performance of, or payment for, the services, or terminate this agreement, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

SEVERANCE

19.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

This agreement has been entered into on the date stated at the beginning of it.

EXECUTED on behalf of

THE MANCHESTER GROWTH COMPANY

BY its authorised signatories:

EXECUTED ON BEHALF of

[FULL COMPANY NAME]

BY:-

Director

Director / Secretary

Schedule 1 – Clauses applicable for Temporary (ad hoc) posts only

- 20.1 Where the applicant is required by law, or any professional body to have any qualifications or authorisations to work in the position which the MGC Group seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will take all reasonably practicable steps to obtain and offer to 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 Agency and has taken all reasonably practicable steps to confirm that the applicant is suitable for the position. In addition where required the Agency will ensure that the candidate has the relevant level of Disclosure and Barring Services check or has the appropriate update service check and provide these details to the MGC Group company. If the Agency is unable to do any of the above it shall inform the relevant MGC Group company of the steps it has taken to obtain this information in any event.
- 20.2 The MGC Group company will pay the Agency fees in respect of applicants as set out in Schedule 3. The fees comprise the applicant's pay and holiday pay, and include the Agency's commission and employer's National Insurance contributions. When booking an applicant for an assignment, the Agency shall advise the MGC Group company of the agreed fees for that applicant. The following conditions apply to the fees:
- (a) they are calculated according to the number of hours worked by the applicant (to the nearest quarter hour);
 - (b) the minimum period of any assignment shall be seven hours;
 - (c) the MGC Group Company shall during the assignment sign a time sheet verifying the number of hours worked by the applicant during a particular week. If the MGC Group company is unable to sign a time sheet produced for authentication by the applicant because the MGC Group company disputes the hours claimed, the MGC Group company shall inform the Agency as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Agency to enable them to establish what hours, if any, were worked by the applicant. Failure to sign the time sheet does not absolve the MGC Group company of its obligation to pay the fees in respect of the hours actually worked;
 - (d) it is acknowledged that the MGC Group Company shall not decline to sign a time sheet on the basis that it is dissatisfied with the work performed by the applicant. In cases of unsuitable or unsatisfactory work the provisions of clause 4.2 shall apply.
 - (e) all invoices shall be submitted with all applicable signed time sheets verifying the number of hours worked by the applicant;
 - (f) the MGC Group company shall be invoiced monthly (in arrears) and invoices are payable within 60 days of receipt. No fee is incurred by the MGC Group company until the applicant commences the assignment, when the Agency will render an invoice to The MGC in respect of the fees;
 - (g) for the avoidance of doubt, the MGC Group Company shall not be required to pay fees for any absences (for whatever reason) of an applicant;
 - (h) the Agency shall not withhold any payment due to an applicant because of any failure by the MGC Group Company to pay the Agency;
 - (i) no increase in the fees payable under this agreement by the MGC Group company to the Agency may be made without the MGC Group company's prior written consent;

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- 20.3 The Agency shall indemnify the MGC Group and any successor to any MGC Group company the Agency against all liability, assessment or claim:
- (a) any National Insurance contributions, income tax or other taxation obligations where such liability, assessment, or claim arises or is made in connection with payments made by the MGC Group company in respect of any applicant while provided as such by the Agency to the MGC Group company; or
 - (b) arising from any such applicant having at any time claimed or being held or deemed to have been an employee of the MGC Group company or been otherwise engaged directly by the MGC Group company including any claim for wrongful or unfair dismissal or redundancy payment.
- 20.4 The Agency shall indemnify the MGC Group and any successor to any MGC Group company against all liabilities arising out of or in connection with any transfer or deemed or alleged transfer by operation of law of any of the Agency's employees or any applicant including in respect of TUPE whether such liabilities arise on or in connection with termination of this agreement or otherwise.
- 20.5 The Agency shall be responsible for deduction and payment of all tax, National Insurance contributions and other taxes and levies in respect of persons employed by the Agency and shall keep the MGC Group and any successor to any MGC Group company indemnified against all liability to make such statutory payments that may be suffered or incurred the MGC Group and any successor to the MGC Group.
- 20.6 The Agency shall ensure that it and any other sub-contractor or intermediary shall at all times comply with their obligations under the Agency Worker Regulations 2010, including but not limited to providing any qualifying applicant with the relevant Terms and Conditions in accordance with regulation 5.
- 20.7 The Agency shall ensure that applicants are contractually obliged to comply with:
- (a) all relevant statutes, laws, regulations and codes of practice from time to time in force in the performance of an assignment and applicable to the MGC Group's business;
 - (b) the MGC Group health and safety policy whilst the applicants are on the MGC Group premises or any of the MGC Group customers' or suppliers' or agents' (direct or indirect) premises; and
 - (c) the MGC Group policies and procedures as may be notified by a relevant MGC Group company from time to time; and
 - (d) a restriction not to disclose any confidential information of the MGC Group or any of the MGC Group customers or suppliers or agents (direct or indirect), which they may acquire during the course of the assignment.
- 20.8 The Agency shall indemnify the MGC Group for any liability, cost, claim, award or any other expense incurred by it arising out of a breach or alleged breach by the Agency, its sub-contractors or any other intermediaries, of the Agency Worker Regulations 2010.
- 20.9 In the event that either party receives an allegation by any applicant that there has been a breach of the Agency Worker Regulations 2010 in relation to the supply of that person to the MGC Group by the Agency (whether that allegation has been made as a request for

information under regulation 16 of the Agency Worker Regulations 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

Schedule 2 – Clauses applicable for permanent posts only

- 21.1 For permanent posts where the applicant has requested that the Agency do not contact referees prior to a conditional offer of employment the Agency will hold the details of references covering the last five years of employment (or two references where there has not been over 5 years of employment) from persons not related to the applicant to ensure that the MGC Group company can take all reasonably practicable steps to confirm that the applicant is suitable for the position, following a conditional offer of employment.
- 21.2 The MGC Group 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 investigations 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.
- 21.3 Upon appointment to a permanent post the applicant will be advised that they will be required to follow all policies and procedures applicable to the relevant MGC Group company.

Schedule 3 – Agency fees

[COSTING AS PER AGENCY APPLICATION TO BE INCLUDED FROM DOCUMENT C OF THE INVITATION TO TENDER]