



**TERMS OF BUSINESS FOR THE INTRODUCTION OF
PERMANENT OR FIXED TERM CONTRACT STAFF
EXEC SEARCH**

(TO BE DIRECTLY ENGAGED BY THE CLIENT)

January 2024

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

"Agency"	Realise HR Ltd (registered company no. SC579479 of 82 Victory Avenue, Gretna, DG16 5DR ("the Agency").
"Cancellation Fee"	means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 3.9;
"Candidate"	means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency's own staff;
"Client"	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is Introduced;
"Data Protection Laws"	means the UK General Data Protection Regulation and the Data Protection Act 2018 (DPA18) or any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
"Engagement"	means the engagement (including the Candidate's acceptance of the Client's offer), employment or use of the Candidate by the Client or by any third party to whom

the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly; For the avoidance of doubt by agreeing to engage or make use of a Candidate in any capacity within a 12 month period, the Client will be liable for the permanent introduction fee.

“Introduction”

means (i) the passing to the Client of a curriculum vitæ or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly;

“Introduction Fee”

means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;

“Losses”

means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

“Remuneration”

includes gross base salary or fees, guaranteed contractual and/or non-contractual bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, nontaxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party.

Where the Client provides a company car, a notional amount of £5000 will be added to the salary to calculate the Agency's fee unless specified. Where the Client provides a non-contractual bonus, a notional 50% of the full amount will be added to calculate the Agency's fee unless specified;

"Replacement Candidate"

means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first 8 weeks of the Engagement;

"Retained Assignment"

The Agency will be engaged on an exclusive basis to complete a search assignment.

"Shortlist Fee"

means the non-refundable fee payable by the Client to the Agency upon the sending of Candidate(s) to the client who meet the agreed specification.

"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.

- **1.2.** Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.

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

- **2. THE CONTRACT**

2.1. These terms of business and the attached Schedule(s) ("the Terms") constitute the contract between the Agency and the Client for the Introduction of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) 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 a director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4. The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

• **3. NOTIFICATION AND FEES**

3.1. The Client agrees to:

3.1.1. notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;

3.1.2. notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and

3.1.3. pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.2.

3.1.4 notify the Agency immediately of any Candidates sent by the Agency that the Client believes to be a duplicate Candidate. For the avoidance of doubt, the Agency considers a duplicate Candidate to be a Candidate submitted in relation only to the specific search that the Agency has been instructed to undertake by the Client, where the Candidate's prior application in relation to the search can be proven with a digital date/time stamp and where the Candidate's prior application is within the period of 3 calendar months.

3.2. The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of 12 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).

3.2.1 The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement.

3.3. The Introduction Fee is calculated in accordance with the attached Fee Structure Schedule based on the Remuneration applicable during the first 12 months of the Engagement.

3.4. Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration

applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.

- **3.5.** Where prior to the commencement of the Engagement, the Agency and the Client agree that the Engagement will be a fixed term assignment of less than 12 months, the Introduction Fee will apply pro-rata.

If the Client:

- (a) extends the Engagement beyond the initial fixed term or;
- (b) re-Engages the Candidate 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 in accordance with our standard terms of business based on the period of the second and any subsequent engagement.

Where prior to the commencement of the Engagement, the Agency and the Client agree that the Engagement will be a part time assignment, the Introduction Fee will not be pro-rated.

3.6. The Client's obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

3.7. VAT is charged at the standard rate on all fees.

3.8. The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.9. If, after an offer of Engagement has been made by the Client and accepted by the Candidate and the Client decides to withdraw the offer, the Client shall be liable to pay the Agency the Full Introduction Fee. If the Agency has been Engaged in a Retained Assignment and this is cancelled then the client shall be liable to pay a cancellation fee of £5000.

3.10. If, after the Agency has sent Candidate(s) to the Client for which the Client agrees meets the agreed specification either by way of interview (in person, by telephone or by any other means), the Client shall be liable to pay a Shortlist Fee of £500 per Candidate sent should the search be withdrawn for any reason aside from Engagement or employment of an alternative candidate not introduced by the Agency.

- **4. REFUNDS**

4.1. If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 8 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2 a refund of 12.5 % will be allowed against the Introduction Fee for each complete week of the initial 8 week rebate period not worked by the Candidate. For

the avoidance of doubt, the total amount of any applicable refund shall not exceed the total amount of the Introduction Fee. There is no refund or 8 week rebate period for fixed term placements, temporary to permanent placements or Replacement Candidates.

4.2. In order to qualify for the refund set out in clause 4.1

4.2.1. the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the noncommencement of the Engagement within 7 days of its termination or noncommencement; and

4.2.2. the Client must pay the Introduction fee in accordance with Clause 3.2.1. If payment is not received within the terms of payment then the refund and Replacement Candidate shall not apply.

4.2.3. the Client must exclusively give the Agency 4 weeks from the date of the notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 4 weeks from the date of the notice no suitable Replacement Candidate can be found then the Client will be eligible for a refund, subject to the rest of this clause 4. There is no refund for a Replacement Candidate.

4.3. For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.

4.4. In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.

4.5. If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 6 calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

5. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details (including names, in full, abbreviated or otherwise, or any other identifying details) to a third party that will be deemed to be a "Third Party Introduction". If that Third Party Introduction results in an Engagement of the Candidate by the third party within 12 months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee calculated in accordance with clause 3.3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

6. SUITABILITY CHECKS

6.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:

6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;

6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;

6.1.3. confirm that the Candidate is willing to work in the position; and

6.1.4. obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body.

6.2. Notwithstanding clause 6.1 the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:

6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;

6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;

6.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and

6.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.

6.3. To enable the Agency to comply with its obligations under clause 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:

6.3.1. the type of work that the Candidate would be required to do;

6.3.2. the location and hours of work;

6.3.3. the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;

6.3.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;

6.3.5. the date the Client requires the Candidate to commence the Engagement;

6.3.6. the duration or likely duration of the Engagement;

6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;

6.3.8. the intervals of payment of Remuneration; and

6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

6.4. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:

6.4.1. obtain confirmation of the Candidate's identity;

6.4.2. obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and

6.4.3. obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency 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.

- **7. INFORMATION TO BE PROVIDED**

When the Agency Introduces a Candidate to the Client the Agency shall inform the Client that they have obtained confirmation of the matters set out in clause 6.1. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

- **8. CONFIDENTIALITY AND DATA PROTECTION**

All information relating to a Candidate is confidential and subject to the Data Protection Laws (UK GDPR and DPA2018) and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain. The client may be requested to complete a Data Sharing Agreement at any time.

- **9. LIABILITY**

9.1. The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude 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 keep indemnified the Agency against any Losses incurred by the Agency arising out of any non-compliance with the Data Protection Laws, and/or as a result of any breach of, these Terms by the Client.

- **10. NOTICES**

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

- **11. SEVERABILITY**

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

- **12. GOVERNING LAW AND JURISDICTION**

These Terms are governed by the law of Scotland and are subject to the exclusive jurisdiction of the Courts of Scotland.

SCHEDULE: FEE STRUCTURE

<u>REMUNERATION</u>	<u>FEE %</u>
£60,000 +	Exclusive: 23%
	Non-Exclusive: 30%

The minimum Introduction Fee for fixed term assignments and permanent placements is £2000.

Introduction Fees are not pro-rated for part time engagements.