

## Terms of Business

**Introduction:** All and any business undertaken by Brightwater, the trading name of Brightwater Selection (Ireland) Limited, (“the Company” or “Brightwater”) is transacted subject to the terms and conditions hereinafter set out, each of which shall be incorporated or implied in any agreement between the Company and its Clients. In the event of a conflict between these terms and conditions and any other terms and conditions, the former shall prevail unless expressly agreed to the contrary by the Company in writing.

**Basis in Law:** Brightwater is licensed to trade as a Recruitment Agency by the Minister for Jobs, Enterprise and Innovation pursuant to Section 3 of the Employment Agency Act, 1971. The Permanent scale of fees below is approved by the Minister in accordance with the Act. For Temporary assignments, the Client must provide full disclosure to Brightwater with regard to pay and working conditions of directly hired employees to ensure compliance with the Protection of Employees (Temporary Agency Work) Act 2012. All disputes shall be governed by the Laws of Ireland and the exclusive jurisdiction of the Irish Courts.

**Responsibility and Liability:** The Company shall endeavour to ensure the suitability of any candidate introduced to the Client and to maintain a high standard of service and integrity, but the Company makes no warranty, express or implied, as to the suitability of any Candidate introduced to the Client.

Brightwater can accept no liability whatsoever for any loss, damage, costs or expenses, howsoever caused which the Client may suffer, or for which the Client may become liable, as a result of the introduction to the Client or engagement by the Client of a Candidate.

The Client is responsible for the taking up of references as to the Candidate’s qualifications, capabilities, integrity, medical history and suitability to meet the specification. It is also the Client’s responsibility to obtain a work permit for the Candidate wherever necessary. Temporary candidates supplied by Brightwater are deemed to be under the direction and control of the Client from the time they report to take up duties and for the duration of the assignment. The Client agrees to be responsible for all acts, errors and omissions be they wilful, negligent or otherwise. As though the worker were the direct employee of the Client, the Client will in all respects comply with all statutes, bye-laws and legal requirements to which the Client is ordinarily subject in respect of the Client’s own staff.

The Client undertakes to supervise the temporary worker. If the Client finds the temporary worker unsatisfactory, a complaint must be made by telephone and confirmed in writing within one day of the finding. Suitable action will then be taken, but in any event the Client waives any right to withhold payment.

### **Permanent Recruitment - Scale of Fees:**

Salaries up to €21,999	18%	Salaries between €45,000 and €79,999	25%
Salaries between €22,000 and €44,999	20%	Salaries of €80,000 and above	30%

All introduction fees are expressed as a percentage of the total first year’s gross annual remuneration package in accordance with the scale ranges above which would include (but is not limited to) salary, commission, guaranteed bonus, car allowance, shift allowance, overseas premiums, living/accommodation allowances, and shares. A company car is valued at €8,000 additional salary. A minimum fee of €10,000 will be charged for all and any Executive Division introductions. The Client agrees to notify the Company immediately when a Candidate introduced by the Company is engaged. The Client shall pay a fee (“the introduction fee”) which shall be invoiced on the day a Candidate introduced by the Company to the Client commences employment with the Client.

**Guarantee period:** In the event that any Candidate terminates, or the Client terminates the engagement, within 12 weeks of the specified date upon which such Candidate commenced work for the Client and provided that a) the Client notifies the Company in writing of the termination of engagement within 7 days and b) the Client (or related company) does not engage the Candidate within 12 months from the date of termination and c) the termination is not due to redundancy and d) all monies due from the Client have been paid in accordance with these terms of business, then (for the next 6 weeks) the Company will endeavour to seek a replacement (to remuneration up to the same value as the leaver) at no extra cost to the Client except for additional advertising costs (costs shall be agreed prior to any advertising). If unsuccessful, Brightwater will pay the Client a refund against the fees paid as follows: \* Up to 6 weeks service 50% refund \* 7 – 12 weeks service 25% refund.

**Retained Assignments:** Retained assignments are payable in three stages, and are non-refundable, as follows:

The Retainer	- one third of projected total fee on commencement of assignment
Short-List Payment	- one third of projected total fee on acceptance of the shortlist
Completion Payment	- the balance of total fee outstanding based upon the remuneration package

A satisfactory shortlist will be a minimum of three candidates who meet the agreed specification and are available for Client interview. If a Retained Assignment is cancelled by the Client, or the Client for any reason alters materially (at the discretion of Brightwater) its requirements, then a “cancellation fee” of 10% of the projected first year’s gross annual remuneration package will be immediately payable in addition to the fees already due, plus all the agreed advertising costs and other expenses incurred by Brightwater.

**Temporary Recruitment - Hourly Rates:** The Client agrees to pay the hourly charge of The Company agreed at the time of booking of the Employee for all hours actually worked. Any other expenses as may be agreed shall be itemised on The Company's invoice in addition to this charge. The Company reserves the right to vary the charge on an existing or subsequent assignment with immediate effect subject to prior notification being given to the Client. Brightwater will be responsible for the Employee's remuneration deducting PAYE Income Tax, PRSI and USC contributions and accounting to the relevant authorities for these deductions. In the event that a Temporary assignment with one Client exceeds 104 weeks and the temporary worker becomes eligible to a redundancy payment under the terms of the Redundancy Payments Acts, the Client indemnifies Brightwater for any associated net Redundancy costs.

**Contract – Monthly Rates:** The Client agrees to pay 3% per month (or part thereof) of the Candidate's gross annual remuneration package to The Company. Invoices will be charged at the beginning of each assignment for the projected length of the appointment, are not refundable. The Client will be solely responsible for the Employee's remuneration deducting PAYE Income Tax, PRSI and USC contributions and accounting to the relevant authorities for these deductions.

**Temporary to Permanent:** If the Client wishes to engage the Candidate on a permanent basis, then in addition to the temporary fees already paid, the Client shall pay a permanent placement fee (see "Permanent Recruitment") and providing that the Candidate has been employed through the Brightwater payroll, the following discount to the permanent fee scale will apply:

<b>27 - 39 weeks (incl.)</b>	<b>20% discount</b>
<b>40 - 52 weeks (incl.)</b>	<b>25% discount</b>
<b>1yr +</b>	<b>30% discount</b>

N.B. No guarantee period applies for temporary to permanent placements.

**Employing the Candidate:** In the event that any Candidate introduced by Brightwater is subsequently employed by the Client (or related organisation) in any capacity whether temporary, permanent or self-employed, within 12 months of the initial introduction date, whether referred internally, by another Agency or by any other means, the Client shall pay the permanent placement fee plus 12% interest from the Candidate's start date, which interest shall accrue monthly in arrears. This applies in all cases including where a client no longer uses the services of Brightwater. Furthermore, if a Client refers an introduced Candidate to any third party who is subsequently employed by them, the same fees will apply and the Client will be liable to pay Brightwater's fees, whether or not it can recover them from the said third party.

**Advertising:** The Company is able to provide an advertising service to the Client, for which charges incurred by the Company are payable by the Client. The Company will accept cancellation of an advertisement provided that the Client gives sufficient notice to enable the Company to cancel the advertisement before the press closing date.

**Payment Terms:** All monies due hereunder shall be paid by the Client as follows:

Permanent Recruitment is billed on the start date of the candidate and payment is due within 14 days.

Temporary Recruitment is billed weekly (except for Contract staff – see above) and payment is due within 7 days.

Retained Assignment fees, Contract fees, Temporary to Permanent fees, Advertising outlay fees and all others fees are due for payment within 7 days of invoice date.

All payments, regardless of currency, must equate to the Euro invoice total at date of payment. In the event of non-payment of Temporary invoices, the Company may, without prejudice to its other rights, withdraw the Employee with one hour's notice.

Interest at 12% and any associated collection costs will be applied to overdue invoices in accordance with the Late Payments in Commercial Transactions Regulations 2012. VAT will be added to all invoices at current rate.

**Data Protection:** All defined terms have their meaning in the Data Protection Acts or the GDPR and in this section:

**"Candidate"** means an applicant for a temporary, contract or permanent position of employment introduced to the Client by the Company;

**"Data Discloser"** means the party, which discloses Shared Data to the other party;

**"Data Protection Acts"** means the Data Protection Acts 1988 and 2003 as amended, revised, modified or replaced from time to time;

**"Data Protection Commission"** or **"DPC"** means the data protection authority for the time being in the territory of Ireland;

**"Data Recipient"** means the party which receives Shared Data from the Data Discloser;

**"Data Security Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Data;

**"Data Subject Access Request"** or **"DSAR"** has the same meaning as the "Right of access by the Data Subject" in Article 15 of the GDPR;

**"General Data Protection Regulation"** or **"GDPR"** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data;

**"Services"** means the recruitment services to be provided by the Company to the Client under these terms of business; and

**"Shared Data"** means the data, including Personal Data, to be shared between the Company and the Client under this section.

**Sharing of Personal Data:** This section sets out the framework for the sharing of data, including Personal Data and Sensitive Personal Data or Special Category of Personal Data, between the Company and the Client as Data Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other.

**Agreed Purposes:** The parties agree to only process Shared Data as described below in ‘Types of Data’ (a) to allow the Client to evaluate and recruit Candidates; and (b) to enable the Company to provide the Services.

**General Compliance:** Each party shall ensure compliance with the Data Protection Acts, GDPR and all other applicable laws and codes of practice and guidance issued by the DPC at all times whilst these terms of business apply between the parties.

**Types of Data:** The following types of Personal Data will be shared between the parties whilst these terms of business apply between the parties:

- a) Candidate name and contact information;
- b) Candidate educational and legal qualifications;
- c) Candidate employment history;
- d) Candidate references; and
- e) Salary and remuneration requirements.

**No Irrelevant or Excessive Data:** The Shared Data must not be irrelevant or excessive with regard to the purposes described under “Agreed Purposes” above.

**Fair and Lawful Processing:** Whilst these terms of business apply between the parties each party shall ensure that it processes the Shared Data fairly and lawfully in accordance with “Grounds for Processing” below.

**Grounds for Processing:** Each party shall ensure that it processes Shared Data on the basis of one or more of the following legal grounds:

- a) Data Subject has freely given his or her explicit, specific, unambiguous consent;
- b) processing is necessary for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the Data Subject prior to entering into a contract;
- c) processing is necessary for compliance with a legal obligation to which the Parties are subject, other than an obligation imposed by contract;
- d) processing is necessary in order to protect the vital interests of the Data Subject;
- e) processing is necessary for the purposes of the legitimate interests pursued by the Parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject.

**Retention Periods:** The parties shall retain or process Shared Data for the longest of the following retention periods that applies:

- a) the period that is necessary to carry out the Agreed Purposes; or
- b) any period prescribed by applicable law or by best industry practice.

**Return of Data:** The Data Recipient shall ensure that any Shared Data are returned to the Data Discloser or destroyed securely (following which each party shall notify the other that the Shared Data in question has been deleted) in the following circumstances:

- a) on termination of the Agreement;
- b) on expiry of the Term of the Agreement; or
- c) once processing of the Shared Data is no longer necessary for the purposes they were originally shared for, as set out under “Agreed Purposes”.

**Transfers:** The Data Recipient shall not disclose or transfer the Shared Data to a third party data controller or processor.

**Security and Training:** Both parties shall use appropriate safeguards to protect the Shared Data from misuse and unauthorised access or disclosure, including, without limitation: (a) maintaining adequate physical controls and password protections; (b) ensuring that data stored on any mobile device (for example, a laptop or smartphone) or transmitted electronically is encrypted; and (c) taking all other measures reasonably necessary to prevent any use or disclosure of the data other than as allowed under this section.

**Data Security Breaches and Reporting Procedures:** The parties undertake to notify any potential or actual losses of the Shared Data to each other as soon as possible and, in any event, within two (2) calendar days of identification of any potential or actual loss, and agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach.

**Obligation to Inform:** In the event of a dispute or claim brought by a Data Subject or the Data Protection Commission concerning the processing of Shared Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

**Mutual Warranties:** Each party warrants and undertakes that it shall:

- a) process the Shared Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;
- b) make available upon request to the Data Subjects who are third party beneficiaries a copy of these terms of business, unless these terms of business contain confidential information;
- c) respond within a reasonable time and as far as reasonably possible to enquiries from the Data Protection Commission in relation to the Shared Data;
- d) respond to DSARs and all other requests from Data Subjects in accordance with Applicable Data Protection Laws;
- e) where applicable, maintain registration with all relevant Data Protection Commission to process all Shared Data for the Agreed Purpose; and
- f) take all appropriate steps to ensure compliance with the security measures set out under “Security and Training”.

**Indemnity:** The Data Recipient shall indemnify and keep indemnified the Data Discloser on demand from time to time from and against all Losses which it causes the Data Discloser as a result of its breach of any of the provisions of this section or arising out of or in connection with all claims, proceedings or actions brought by the DPC, any other competent public authority or a Data Subject against the Data Discloser with respect to the processing of the Shared Data by the Data Recipient.

**Amendments:** All questions relating to these Terms of Business must be made in writing otherwise they are deemed to be accepted. These Terms of Business are valid from 15<sup>th</sup> May 2018, they supersede any other Terms previously received. No amendments to these Terms are valid unless authorised in writing by a Company Director.