



CONTINGENT AGREEMENT FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM CONTRACT STAFF (TO BE DIRECTLY ENGAGED BY THE CLIENT) (US)

This Agreement is made on [insert date] ("**Effective Date**")

BETWEEN

- (1) BPM Tech a company incorporated in England and Wales and whose registered office is at St Pegs Mil, Thornhill Beck Lane, West Yorkshire, HD6 4AH ("**Agency**"); and
- (2) [insert registered business name of Client], a [insert state of registration] [corporation/LLC/[OTHER ENTITY]], with offices located at [insert office address] ("**Client**")

each a party and together the parties to this Agreement.

BACKGROUND

- (A) **WHEREAS** Agency is in the business of providing recruitment and staffing services to its clients with staffing and hiring needs.
- (B) **WHEREAS** Client wishes to obtain, and Agency wishes to provide, the recruitment and staffing services on the terms set out in this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration given, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement the following definitions apply:

| | |
|------------------------------------|---|
| "Accepted" and "Acceptance" | means the Candidate's written acceptance of an Engagement; |
| "Agreement" | means the terms and conditions set out herein together with any appendices or annexes attached hereto; |
| "Applicable Law" | means all applicable state and federal laws, local laws, regulations, regulatory, codes, requirements and mandatory codes of practice, as amended and in force from time to time; |
| "Business Day" | means a day other than a Saturday, Sunday, federal or public holiday; |
| "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; |
| "Compensation" | means the annual equivalent of Candidate's total remuneration including gross base salary, wages or fees, guaranteed and/or anticipated bonuses and commission earnings, guarantees, incentives, draw earnings, fringe benefits, shift allowances, profit share, stock options, dividends, stock, allowances, inducement payments and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services rendered to or on behalf of the Client or any third party; |
| "Confidential Information" | means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Agreement. It does not include information which is (i) already in the public domain or becomes publicly available through no breach of this Agreement by the recipient; (ii) required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body; (iii) already known to a party prior to receiving it; (iv) independently developed by the receiving party; or (v) received by the receiving party from a third party without restriction and without a breach of an obligation of confidentiality; |



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| "Data Protection Laws" | means any applicable state, federal, provincial, foreign or international laws or regulations either in effect or that come into effect during the term of this Agreement relating to the Processing of Personal Information; |
| "Engage", "Engaged" and "Engagement" | means the employment, hire or other use of the Candidate by the Client or by any third party to whom the Candidate has been Introduced by the Client, directly or indirectly and whether under a contract of service or contract for services, or otherwise, and/or whether on a permanent, temporary or other basis, whether under an agency, license, franchise or partnership agreement or through a corporate body of which the Candidate is an officer, employee or other representative, of a Candidate by or on behalf of the Client, and "Re-Engage", "Re-Engaged" and "Re-Engagement" shall be construed accordingly; |
| "Introduce", "Introduced" and "Introduction" | means (i) the passing to the Client, or by the Client to a third party, of a résumé, and/or information in any format which expressly or impliedly identifies the Candidate including, but not limited to, information found on LinkedIn; 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; |
| "Introduction Fee" | means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement as set out in Clause 5; |
| "Losses" | means all losses, liabilities, damages, costs, expenses, fines, punitive damages, 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 attorney's fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands; |
| "Non-Agency Candidate" | means any person Engaged by the Client who was not Introduced by the Agency including but not limited to individuals sourced by the Client itself, by third parties, other staffing agencies or former employees re-engaged by the Client; |
| "Personal Information" | means any information relating to an identified or identifiable natural person that is Processed in connection with the Services and includes "personal data" as defined under the General Data Protection Regulation (EU) 2016/679 ("GDPR") and "personal information" as defined under the California Consumer Privacy Act of 2018, Cal. Civ. Code Sections 1798.100-1798.199 ("CCPA"); |
| "Process" and "Processing" | means to perform any operation or set of operations on Personal Information or sets of Personal Information, such as collecting, recording, organizing, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying, as described under Data Protection Laws; |
| "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 four (4) weeks of the Engagement; and |
| "Sales Tax" | means federal, state, provincial and local taxes, any applicable sales, use, property, ad valorem, value added taxes, due on any fee or amount payable under this Agreement as applicable. |

1.2 In this Agreement:

- 1.2.1 any reference to this Agreement or to any other document includes any permitted variation or amendment to this Agreement or such other document;
- 1.2.2 the use of the singular includes the plural and vice versa and words denoting any gender will include a reference to each other gender;
- 1.2.3 clause and schedule headings and the use of bold type are included for ease of reference only and will not affect the construction or interpretation of any provision of this Agreement;
- 1.2.4 any reference to any statute, statutory instrument, order, regulation or other similar instrument will be construed as including references to any statutory modification, consideration or re-enactment of that provision (whether before or after the date of this Agreement) for the time being in force including all instruments, orders or regulations then in force and made under or deriving validity from it; and



- 1.2.5 any phrase introduced by the terms 'include', 'including', 'in particular' or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

2. THE AGREEMENT

- 2.1 This Agreement is deemed accepted and agreed by the Client upon the first of the following to occur: (a) the Client's execution of the Agreement; (b) the Client's request for services from the Agency; (c) the Client's in-person or phone interview of a Candidate; (d) an Introduction to the Client of a Candidate; (e) an Engagement by the Client of a Candidate; or (f) the passing by the Client of any information or résumé (whether written or oral) about the Candidate to any third party following an Introduction.
- 2.2 Unless otherwise agreed in writing between the parties, the Agency shall be appointed on a non-exclusive basis to Introduce Candidates for a position the Clients seeks to fill.
- 2.3 Subject to Clause 2.2, should the Client Engage a Non-Agency Candidate to fulfil a position for which the Client has instructed the Agency on an exclusive basis, the Client shall in relation to that Engagement pay the Agency an Introduction Fee to be calculated in accordance with Clause 5.2 that would have been payable had the Non-Agency Candidate been Introduced by the Agency.

3. CLIENT OBLIGATIONS

- 3.1 The Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
- 3.1.1 the type of work that the Candidate would be required to do;
 - 3.1.2 the location and hours of work;
 - 3.1.3 the experience, training, qualifications and any authorization 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;
 - 3.1.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 3.1.5 the date the Client requires the Candidate to commence the Engagement;
 - 3.1.6 the duration or likely duration of the Engagement;
 - 3.1.7 the minimum rate of Compensation, expenses and any other benefits that would be offered;
 - 3.1.8 the intervals of payment of Compensation; and
 - 3.1.9 the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 3.2 The Client shall satisfy itself as to the suitability of the Candidate and agrees to be responsible for:
- 3.2.1 determining the suitability of the Candidate for the position they are seeking to fill;
 - 3.2.2 taking up any references provided by the Candidate before Engaging the Candidate;
 - 3.2.3 conducting background and/or pre-employment screening checks providing such checks are permitted by Applicable Law;
 - 3.2.4 confirming the accuracy of the Candidate's résumé;
 - 3.2.5 verifying that the Candidate has the required qualifications, permits, licenses or authorizations required for the Engagement;
 - 3.2.6 confirming the Candidate has the legal right to work in the United States and/or obtaining any work permits, licenses;
 - 3.2.7 the arrangement of medical examinations and/or investigations into the medical history of any Candidate (including but not limited to alcohol/drug tests) and as permitted by Applicable Law;
 - 3.2.8 satisfying any medical and other requirements, qualifications or permissions required for the Candidate to work in the Engagement; and
 - 3.2.9 payment of the Candidate's wages, expenses, benefits, workers' compensation premiums, withholding of all taxes, and all employer responsibilities.
- 3.3 Subject to Clause 2.2, where the Agency has been engaged on a non-exclusive basis, each Introduction made by the Agency shall take priority over any duplicate applications made by or on behalf of the same Candidate if the Agency's Introduction was made first in time.
- 3.4 Client authorizes the Agency to act on its behalf in seeking a Candidate to meet the Client's requirements and the Agency will provide such services by any means it considers appropriate, including at the Agency's discretion, a direct approach to potential Candidates, using the Agency's established contacts and networks.



Unless otherwise agreed in writing, the Agency shall seek a Candidate on a strictly confidential basis and Client's identity shall not be disclosed in any advertisement or to any potential Candidate until the Agency has confirmed a Candidate's interest in, and suitability for, a position with the Client.

4. AGENCY OBLIGATIONS

- 4.1 Subject to Clause 3.1, the Agency shall use reasonable efforts 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:
- 4.1.1 ensure that it would not be detrimental to the interests of either the Client or the Candidate;
 - 4.1.2 ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body; and
 - 4.1.3 confirm that the Candidate is willing to work in the position.
- 4.2 The Agency does not guarantee the performance of any Candidate or the accuracy of information provided regarding a Candidate.
- 4.3 Any background checks conducted by the Agency shall be made at the Client's written request (in accordance with Applicable Law) and expense and are not intended to be an exhaustive check of Candidate's education, employment or background and the Agency provides no warranties for the information provided.

5. NOTIFICATION AND FEES

- 5.1 The Client agrees to:
- 5.1.1 immediately inform the Agency of the terms of any offer of an Engagement which it makes to a Candidate;
 - 5.1.2 immediately notify the Agency when its offer of an Engagement to a Candidate has been Accepted and provide details to the Agency of the Compensation agreed with the Candidate together with any evidence as requested by the Agency; and
 - 5.1.3 pay the Introduction Fee, to be calculated in accordance with Clause 5.2, by the due date(s) for payment in Clause 6.2.
- 5.2 The Introduction Fee shall be calculated in accordance with the fee structure set out below based on the total Compensation payable to the Candidate during the first twelve (12) months of their Engagement:

| Compensation | Introduction Fee |
|-----------------|--------------------|
| Up to \$100,000 | Compensation x 25% |
| \$100,000 + | Compensation x 35% |

- 5.3 Where the Client provides a company vehicle, a notional amount of \$15,000 will be added to the Compensation figure used to calculate the Introduction Fee payable.
- 5.4 Where the actual Compensation is not known, the Agency will charge an Introduction Fee calculated in accordance with Clause 5.2 based on its determination of the Compensation taking into account the market rate level of Compensation 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.
- 5.5 If the Client Engages the Candidate on an hourly basis, the Compensation shall be based on the Candidate's hourly rate multiplied by 2000.
- 5.6 Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than twelve (12) months ("**Initial Fixed Term**"), the Introduction Fee will be calculated on a pro-rata basis. If the Client (a) extends the Engagement beyond the Initial Fixed Term; or (b) Re-Engages the Candidate within twelve (12) months from the date of termination of the Initial Fixed Term, the Client agrees and shall pay a further fee based on the additional Compensation applicable for (a) the extended period of Engagement; or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under Clause 5.2 had the Candidate first been Engaged for twelve (12) months or more.
- 5.7 If the Client Engages the Candidate within the period of twelve (12) 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 later), the Client shall pay the Agency the Introduction Fee in accordance with Clause 5.2.
- 5.8 If, after an offer of Engagement has been made and Accepted, the Engagement does not commence because the Candidate withdraws their Acceptance, the Client shall notify the Agency immediately.



- 5.9 Subject to the receipt of prior written approval from the Client, the Client agrees to reimburse the Agency for any expenses incurred by the Agency on the Client's behalf and that such charges will be payable whether or not the Candidate is Engaged.
- 5.10 The Agency reserves the right to charge a withdrawal/cancellation fee of 50% of the Introduction Fee for the services provided by Agency where an offer of an Engagement (whether written or verbal) to a Candidate is withdrawn by the Client prior to the Candidate commencing. The withdrawal/cancellation fee shall be payable within fourteen (14) days of the date of the Agency's invoice.
- 5.11 For the purpose of calculating the withdrawal/cancellation fee described in Clause 5.10, the Introduction Fee shall be based upon the Agency's estimate as to the total Introduction Fee that would have been payable if each of the positions the Agency was appointed to fill had been filled during the course of the services. Where the estimated Compensation is calculated by reference to a salary band given for relevant positions, the estimate will be based on the upper limit of the salary band given for the relevant positions.

6. INVOICING AND PAYMENT

- 6.1 Upon confirmation of a Candidate's Acceptance of an Engagement the Agency shall invoice the Client for the Introduction Fee plus any applicable Sales Tax.
- 6.2 The Client shall pay the Agency within fourteen (14) days of receipt of a valid invoice.
- 6.3 The Agency reserves the right to charge interest on invoiced amounts that remain unpaid at the due date at a rate equal to the lesser of 10% per annum or the maximum amount allowable under Applicable Law calculated daily and compounded monthly and to charge compensation and further recovery costs where such costs have been incurred by Agency.
- 6.4 The Client's obligations under this Clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 6.5 Unless otherwise agreed by the parties, all transactions under this Agreement shall be conducted in US dollars (**USD**) and paid by means of electronic bank transfer.

7. REFUNDS

- 7.1 If, after an offer has been made and Accepted, the Engagement (a) does not commence because the Candidate withdraws their Acceptance; or (b) the Engagement is terminated by either the Candidate or the Client before the expiry of twelve (12) weeks from the date of commencement of the Engagement; then subject to the terms of Clause 7.2, the Agency will refund the Introduction Fee paid in accordance with the scale of refunds set out below:

| Week in which the Engagement terminates in accordance with Clause 7.1 | Percentage of Introduction Fee eligible for refund |
|--|---|
| 0-2 | 80% |
| 3-4 | 70% |
| 5-6 | 50% |
| 7-8 | 30% |
| 9-12 | 10% |
| >12 | 0 |

- 7.2 No refund will be due or payable if:
- 7.2.1 the Client has not paid the Introduction Fee in full or complied with the provisions of Clause 6.2;
- 7.2.2 the Engagement was for a fixed term of less than twelve (12) months;
- 7.2.3 the Client does not require a Replacement Candidate;
- 7.2.4 a Replacement Candidate has previously been provided;
- 7.2.5 a Replacement Candidate has Accepted an Engagement offer;
- 7.2.6 the cause of the Candidate's employment termination or resignation is as a result of the Client's failure to meet its obligations under Clause 3.2;
- 7.2.7 the Candidate is laid off due to downsizing, economic reasons or lack of work;
- 7.2.8 the Candidate is discharged without cause;
- 7.2.9 the Candidate resigns as a result of pregnancy, injury to health, discrimination or any other unlawful acts against the Candidate;
- 7.2.10 the cause of the Candidate's employment termination or resignation is beyond the Agency's control; or



7.2.11 the Client fails to notify the Agency, in writing, within five (5) Business Days of the Engagement ending, or within five (5) Business Days of notice being given to end the Engagement (whichever is earlier) together with a reason for the termination of the Engagement ("Notification of Termination").

7.3 If the Engagement is terminated by either the Candidate or the Client before the expiry of four (4) weeks from the date of commencement of the Engagement, the Agency may in the first instance choose to Introduce a Replacement Candidate to the Client at no additional cost provided that the Client has paid the Introduction Fee in full.

7.4 Where a Replacement Candidate has not been Engaged within twelve (12) weeks of the Notification of Termination the Agency shall, subject to Clause 7.2, refund the Introduction Fee to be calculated in accordance with Clause 7.1.

7.5 Pursuant to Clause 7.4, should the Client subsequently:

7.5.1 Engage a Replacement Candidate within twelve (12) months of Introduction, the Client shall be required to pay the Agency an Introduction Fee based on the Compensation of the Replacement Candidate, to be calculated in accordance with Clause 5.2; or

7.5.2 Re-Engage a Candidate within a period of twelve (12) months from the Notification of Termination, the Client shall repay the refund in full to the Agency within fourteen (14) days from the date of commencement of the Re-Engagement. The Client shall not be entitled to any further refund in relation to the Re-Engagement of the Candidate.

7.6 For the avoidance of doubt, there will be no refund where the Candidate's Engagement is terminated by either the Client or the Candidate after the expiry of twelve (12) weeks from the date of commencement of the Engagement.

8. INTRODUCTIONS TO THIRD PARTIES

8.1 Introductions of Candidates are confidential. If the Client discloses a Candidate's details to a third party, or refers the Candidate 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 twelve (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 5.2. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under Clause 7 in any circumstances.

9. EQUAL OPPORTUNITIES

9.1 The Agency is an equal opportunities employer. It shall be the policy of both the Agency and the Client to provide equal opportunity without regard to race, color, religion, sex, national origin, age, handicap or veteran status. The Agency understands that the Client does not discriminate in employment or hiring based on race, color, creed, sex, age, national origin, religion, handicap, sexual orientation, marital status, veteran status or any other basis prohibited by Applicable Law.

9.2 The Agency shall provide reasonable assistance to the Client in its diversity, equity, and inclusion ("**DEI**") initiatives and policy implementation through channel partners, candidate recruitment, marketing strategies, and employer branding, as applicable.

10. NON-SOLICITATION COVENANTS

10.1 Neither party shall be in breach of Clause 10.1 in the event that the employee approached that party directly or responded to a vacancy advertised to the general public without that employee having been previously approached directly by that party.

11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time during the term of the Agreement, and for a period of two (2) years after termination of the Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or contractors of the other party (including the terms of the Agreement), except as permitted by Clause 11.2.

11.2 Each party may disclose the other party's Confidential Information to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Clause 11 and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Agency shall cause such employees, agents and subcontractors to become bound by the obligations of confidentiality that bind Agency.

11.4 The parties acknowledge that any unauthorized disclosure or use of the Confidential Information shall be a material breach of this Agreement and would result in irreparable harm and significant injury, the degree of which may be difficult to ascertain. Therefore, it is agreed that, in addition to any other remedies that may be available to a party upon any such violation or



threatened violation hereof, a party shall have the right to enforce this Agreement by seeking specific performance, injunctive relief or by any other means available to such party at law or in equity.

- 11.5 Client recognizes that in the context of doing business hereunder, Agency may provide Client with Confidential Information about Agency's business. As such, all information provided by Agency to Client, including any information relating to Agency personnel or Candidates, ("**Agency Confidential Information**") shall be held in strict confidence and used solely for the purpose of conducting business with each other in the manner contemplated by this Agreement, except as necessary for Client's evaluation of a Candidate or as required by law.

12. DATA PROTECTION

- 12.1 The parties agree to comply with their obligations under Data Protection Laws.
- 12.2 The Agency shall Process Personal Information for the duration of the Agreement (unless otherwise agreed in writing) only (a) as necessary to effect Agency's obligations under the Agreement; and/or (b) on documented and instructions from Client, unless otherwise required by Applicable Law.
- 12.3 The Agency shall notify the Client if such instructions concerning the Processing of Personal Information violate Data Protection Laws.
- 12.4 The Agency shall ensure that its employees and agents as well as its approved subcontractors and sub-processors (and their employees) (a) understand, have received proper training for, and shall comply with their duties and responsibilities under the Data Protection Laws while providing services under this Agreement and shall provide Client with reasonable assistance to enable Client to fulfil its obligation under Data Protection Laws.
- 12.5 Both parties shall comply with the other party's reasonable request to the right of access, right to rectification, restriction of Processing, erasure, data portability, objection to Processing or right to be removed from automated decision-making protocols, should such party be eligible.
- 12.6 In the event of a security breach which affects the other party's Personal Information, the party experiencing the breach shall take immediate corrective action to remedy any such deficiencies and any action pertaining to unauthorized disclosures as required under Applicable Law and Data Protection Laws and shall notify the other party without undue delay, no later than one (1) Business Day upon becoming aware of such breach and shall provide such party with sufficient information to meet any obligations to report or inform subjects of the breach.

13. LIABILITY AND INDEMNIFICATION

- 13.1 THE AGENCY SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY LOSSES 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.
- 13.2 THE AGENCY SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY LOSSES ARISING FROM ANY CANDIDATE'S ACTS OR OMISSIONS, WHETHER WILFUL, NEGLIGENT, FRAUDULENT, DISHONEST, RECKLESS OR OTHERWISE, OR ANY LOSSES ARISING IN CONNECTION WITH ANY FAILURE OF ANY CANDIDATE TO MEET THE CLIENT'S REQUIREMENTS.
- 13.3 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR PUNITIVE DAMAGES, LOSS OF PROFIT, LOSS OF GOODWILL OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY EITHER PARTY UNDER THIS AGREEMENT WHETHER IN CONTRACT OR TORT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, NEITHER PARTY EXCLUDES LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS OWN NEGLIGENCE, WILFUL OR GROSS NEGLIGENCE, FRAUD OR FOR ANY OTHER LOSS WHICH IT IS NOT PERMITTED TO EXCLUDE UNDER LAW.
- 13.4 SUBJECT TO CLAUSE 13.3, THE MAXIMUM LIABILITY OF THE AGENCY TO THE CLIENT IN ANY ONE YEAR SHALL BE LIMITED IN THE AGGREGATE TO THE LESSER OF ONE MILLION US DOLLARS (\$1,000,000) OR ONE HUNDRED AND TWENTY PERCENT (120%) OF THE INTRODUCTION FEES PAID OR PAYABLE BY THE CLIENT TO THE AGENCY IN THE LAST FULL YEAR (OR PART THEREOF AS THE CASE MAY BE) OF THIS AGREEMENT PRIOR TO THE CAUSE OF ACTION GIVING RISE TO THE RELEVANT CLAIM OR SERIES OF CLAIMS.



- 13.5 THE CLIENT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE AGENCY AGAINST ANY LOSSES INCURRED BY THE AGENCY, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF ANY NEGLIGENT, WILFUL, RECKLESS OR WRONGFUL ACT OR OMISSION OF CLIENT, AND/OR BREACH OF THIS AGREEMENT BY THE CLIENT.

14. NOTICES

- 14.1 Any notice required to be given under this Agreement shall be delivered by hand, e-mail or certified/registered mail to the recipient at its address specified in this Agreement.

14.1.1 in the case of Agency, BPM Tech, St Pegs Mil, Thornhill Beck Lane, West Yorkshire, HD6 4AH, info@bpm-tech.com ; and

14.1.2 in the case of the Client, the last postal and/or e-mail address to which Agency has sent correspondence to the Client.

- 14.2 Notices will be deemed to have been received, if delivered by hand, at the time of delivery if delivered before 5.00 p.m. (EST) on a Business Day or in any other case at 10.00 a.m. (EST) on the next Business Day after the day of delivery; or if sent by mail, 48 hours from the date of mailing or, in the case of mailing to or from a place overseas, seven (7) Business Days from the date of mailing; or if sent by e-mail, at the time of dispatch if dispatched on a Business Day before 5.00 p.m. (EST) or in any other case at 10.00 a.m. (EST) on the next Business Day after the day of dispatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant Business Day, the recipient informs the sender that the e-mail message was received in an incomplete or illegible form.

15. SEVERABILITY

- 15.1 If any of the provisions of this Agreement 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 Law.

16. RELATIONSHIP OF PARTIES

- 16.1 The Agency is an independent contractor and is not an employee, agent, partner, joint venture, or legal representative of the Client. Nothing in this Agreement is intended to, or shall, operate to create a partnership or joint venture of any kind between the Agency and the Client, nor authorize either party to act as agent for the other. Neither party has the authority to act in the name or on behalf of, or otherwise bind, the other party in any way.

17. COMPLIANCE WITH LAWS

- 17.1 In performing their obligations under this Agreement, both parties shall comply with all Applicable Laws.
- 17.2 Both parties shall comply with all applicable anti-bribery and anti-corruption laws including, without limitation, the Foreign Corrupt Practices Act.
- 17.3 Neither party will offer, give or agree to give to any employee or representative of Agency or of Client or of any third party any gift, personal financial incentive or other consideration that could act or reasonably be perceived to act as an inducement or a reward for any act or failure to act connected to the performance of this Agreement or the arrangement of an Assignment.

18. SUB-CONTRACTING AND ASSIGNMENT

- 18.1 Neither party shall assign, charge or otherwise deal with its rights or obligations under this Agreement, or attempt to do any such things, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Agency may sub-contract any of its obligations under this Agreement.

19. WAIVER

- 19.1 Any waiver of this Agreement or of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.



20. TERMINATION

- 20.1 Subject to Clause 14.1 either party may terminate this Agreement subject to the provision of one (1) month's notice to the other party.
- 20.2 Any termination of the Agreement however caused shall not affect any rights or liabilities accrued before the time of termination or the continuance in force of any provision of the Agreement which expressly or by implication is intended to come into or continue in force after termination.

21. VARIATION

- 21.1 No variation or alteration to this Agreement will be valid unless the details of such variation are agreed between the Client and Agency and set out in writing and signed by both parties.

22. FORCE MAJEURE

- 22.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under the Agreement resulting from causes beyond its reasonable control including acts of God, fire, flood, earthquake or other natural disaster, terrorist attack or civil commotion.

23. SUCCESSORS AND ASSIGNS

- 23.1 This Agreement is binding on and inures to the benefit of the parties and their respective successors and permitted assigns.

24. THIRD PARTY BENEFICIARIES

- 24.1 This Agreement benefits solely the parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

25. COUNTERPARTS

- 25.1 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Clause 14, a signed copy of this Agreement delivered by email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

26. ENTIRE AGREEMENT

- 26.1 This Agreement constitutes the entire agreement between the parties and unless otherwise agreed in writing by a member of the leadership team of the Agency, this Agreement shall prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.

27. CHOICE OF LAW, DISPUTE RESOLUTION & WAIVER OF JURY TRIAL

- 27.1 This Agreement, including all documents and exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America without giving effect to any conflict of laws provisions thereof.
- 27.2 In the event of any controversy or claim arising out of or relating to this Agreement, or the breach or termination thereof, including but not limited to services provided under this Agreement and any alleged violation of any federal, state, or local laws, regulation, common law, or public policy, whether sounding in contract, tort or statute, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, then each party irrevocably agrees that any legal suit, action, or other proceeding to enforce the terms of this Agreement shall be instituted in the federal courts of the United States or the courts of the State of New York in each case located in the City of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by certified mail to such party's address set forth herein shall be effective service of process for any legal suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any legal suit,



action, or other proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such legal suit, action, or other proceeding brought in any such court has been brought in an inconvenient forum.

- 27.3 In the event that any party institutes any legal suit, action, or other proceeding against the other party to enforce the covenants contained in this Agreement or obtain any other remedy in respect of any breach of this Agreement arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.
- 27.4 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS DECIDED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE 27.4.

The signatures to this Agreement below.

IN WITNESS OF WHICH the duly authorized executives of the parties have signed this Agreement on the date below.

For and on behalf of BPM Tech

Agency Signature

Print Name

Date

For and on behalf of [insert registered business name of Client]

Client Signature

Print Name

Date
