# S O M E R S E T  W H I T E

**Recruitment Agreement for Permanent or Short-Term Staff**

If a Member or Client (collectively referred to as “Client” herein) instructs the Company to search for a suitable person (the "Applicant") to be Introduced by the Company for the purposes of an Engagement the following terms will apply:

1. **Definitions**

For the purposes of this Agreement, the following definitions shall apply:

1.1. “Applicant” means the person (whether or not previously known to the Client) Introduced by the Company to the Client for an Engagement including (without limitation) any officer, member, employee or other representative of the Applicant if the Applicant is a corporate body or partnership (including limited or limited liability partnership), and members of the Company's own staff.

1.2. "Engagement" means the appointment of an Applicant to perform services for a Client or on a Client’s behalf or for or on behalf of any third party at a Client’s request, whether directly or through a company in which the Applicant is an officer or employee or which is controlled by the Applicant ("Engage," "Engaged" and "Engaging" shall be construed accordingly);

1.3. “Client” means the person, firm or corporate body to which the Applicant is introduced and/or has instructed the Company to fill a vacancy, and includes a Member.

1.4. “Company” means Somerset White LLC whose principal place of business is at 580 Broadway, Suite 303, New York, New York 10012.

1.5. "Introduction" means (i) the interview of an Applicant by on or behalf of a Client in person or by telephone following a Client’s instructions to the Company to search for an Applicant; or (ii) the passing to a Client of a curriculum vitae or information which identifies the Applicant and which leads to an offer of Engagement of that Applicant and in both (i) and (ii) irrespective of whether or not that Applicant was known previously to the Client. ("Introduced" shall be construed accordingly);

1.6. "Introduction Fee" means the fee payable by the Client to the Company at the rate set out in the appropriate Price Guide; and

1.7. “Member” means an individual who receives services and benefits from the Company as detailed in a separate Membership Agreement.

1.8. “Price Guide” means a schedule detailing the amount payable to the Company by a Client upon appointing of the Company and on the Engagement of an Applicant.

1.9. "Remuneration" means the gross salary payable to an Applicant in respect of the first 12 months of the Engagement notwithstanding that the Engagement may be terminated during that period. If the value of the Remuneration is uncertain, the best estimate available, to be agreed between the Company and the Client, shall be used in calculating such amount.

1.10. “Retainer Fee” means a non-refundable deposit (detailed in the Price Guide) which must be paid in order for the Company to begin its vacancy search on behalf of a Client.

1.11. “Replacement Applicant” means any Applicant Introduced by the Company to the Client to fill the Engagement following the Introduction of another Applicant whose Engagement either did not commence or was terminated during the first 6 weeks of the Engagement.

2. **The Agreement**

2.1. The terms of this Agreement, together with the Terms and Conditions with respect to a Member, constitute the entire agreement between the Company and the Client for the supply of permanent or contract staff (to be engaged directly by the Client). This Agreement is deemed to be accepted by the Client by either (i) the Client's signature on any recruitment paperwork or application form that is given to the Client by the Company, or (ii) an Introduction, offer of Engagement, or Engagement to an Applicant, or (iii) a request by the Client to receive an interview regarding an Applicant or to interview an Applicant, or (iv) the passing by the Client of any information about the Applicant to any third party.

2.2. The terms of this Agreement shall supersede all previous discussions and previous agreements in relation to recruitment and shall prevail over any other terms put forward by the Client.

2.3. No variation or alteration to the terms of this Agreement shall be valid unless they are agreed in writing between a director of the Company and the Client.

2.4. When Introducing Applicants to the Client for direct Engagement by that Client it is the understanding that only the Client, as employer, is responsible for the payment of any remuneration to the Company. In no event shall the Applicant be responsible for any payment to the Company. The Client or Member authorizes the Company to act on its behalf in seeking Applicants and, if the Client so requests, shall advertise for such Applicants through such methods as are agreed with the Client.

2.5. It is the Client's responsibility to immediately inform the Company if it receives information and/or a CV from the Company in relation to an Applicant for whom it has already received information from a different agency, company or individual. If no such notification is received by the Company and in the event that an offer is made to the Applicant, the Company is entitled to the Introduction Fee or a proportion thereof that shall be payable to the Company, by the Client, notwithstanding any fee or charges that may be payable to any other agency or company.

3. **Standards Required**

The Client agrees to provide sufficient information to the Company to enable it to assess the suitability of an Applicant for the Engagement. The Client agrees in particular to provide the following information at the time of requesting the Services:

3.1. the date on which it is proposed that the Engagement should begin and the duration or likely duration of the Engagement;

3.2. the position to be filled including the type of work which the Applicant would be required to do, the location at which and the hours during which the Applicant would be required to work;

3.3. any risks to health or safety relevant to the Engagement and the steps taken by the Client to prevent or control such risks;

3.4. the experience, training, qualifications and any authorizations which 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 and any expenses payable by or to the Applicant;

3.5. the minimum rate of pay and any other benefits to be offered in respect of the relevant position and the intervals at which they would be paid; and

3.6. where applicable, the length of notice which the Applicant would be required to give and entitled to receive to end the Engagement.

4. **Skills and Qualifications**

4.1. The Company shall endeavor to use reasonable efforts to ensure that all Applicants are suitable for the Engagement but gives no warranty in this regard.

4.2. The Company cannot guarantee to find a suitable Applicant for each or any vacancy.

4.3. The Company may be required or tasked with carrying out various background checks on Applicants on behalf of the Client, however, the Client has sole responsibility for: (i) satisfying itself that the Applicant has the necessary qualifications and skills to perform the duties required including, without limitation, by investigating and/or confirming any references (including the confirmation of any professional or academic qualifications) supplied by the Company and/or the Applicant before Engaging the Applicant; (ii) obtaining any work permit necessary for the Engagement; (iii) verifying any medical and other requirements or qualifications required by law or essential for the Engagement; and (iv) ensuring compliance with all legal obligations of the Applicant in respect of any contract relating to their pre-existing employment or engagement.

4.4. Should the Client be provided with a non-disclosure agreement by the Company to issue to the Applicant, the Company makes no guarantee or warranty that it shall be fit for the purpose the Client requires and it is the Client's responsibility to ensure it is suitable and legally binding.

5. **Notification and Fees**

5.1. Upon appointment of the Company, a Retainer Fee shall be paid by the Client as a precondition for the Company commencing performance of the vacancy search. The Company will not commence the search until the Retainer Fee has been paid in cleared funds.

5.2. The Introduction Fee payable on Engagements is calculated in accordance with the Price Guide issued to Clients upon the date they requested a search for a particular position.

5.3. The Introduction Fee will be payable for an Introduction which results in that Applicant being Engaged, whether the offer of such Engagement is made immediately or at any time within a 12- month period following the date of Introduction or final interview, whichever takes place later.

5.4. Where an offer is made to Engage an Applicant, the Client shall notify the Company of such offer on the same day. The Client shall advise the Company immediately if an offer of Engagement is accepted by the Applicant, providing full details of the Applicant's Remuneration and the Applicant's agreed start date.

5.5. Where, prior to commencement to any Engagement, the Company and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata, unless otherwise stated in the Price Guide. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Applicant 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 based on the additional Remuneration 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 5.1 had the Applicant first been Engaged for 12 months or more.

5.6. If: (i) a Client or any of a Client's employees or representatives refer an Applicant directly or indirectly to a third party within six months of the Introduction and such third party Engages the Applicant; or (ii) any Engagement of an Applicant occurs as a direct or indirect result of the Introduction of the Applicant, then the Company shall be entitled to charge the Client, and the Client shall pay, the Introduction Fee as though the Client itself had Engaged the Applicant. In such circumstances, the Client shall not be entitled to any refund referred to in section 7, below.

5.7. The Introduction Fee shall be payable within 14 days of the date of the Company's invoice, with respect to the Engagement.

5.8. Where applicable, sales and use taxes shall be charged at the standard rate on all fees. All invoices must be settled in full in US Dollars and, for the avoidance of doubt, the Client is solely responsible for paying all bank transfer, currency conversion and other fees and charges so that the full amount of the invoice is received by the Company. The Client is solely responsible for all wages, benefits, taxes, payroll deductions, insurance, workers compensation, social security withholding and other remuneration or benefits to which the Applicant is entitled under all applicable laws and regulations.

5.9. The Company reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% (four percent) per annum above the published rate of JP Morgan Chase & Co. (adjusted monthly and compounded daily) from the due date until the date of payment.

5.10. If, after an offer for Engagement has been made, the Client decides for any reason to withdraw it at any time prior to the commencement of Engagement, the Client shall be liable to pay the Company a Cancellation Fee calculated as 10% of what the Introduction Fee would have been under section 5.3, above, had the commencement of Engagement taken place.

6. **Payment**

6.1. The Company shall be entitled to issue an invoice for the Introduction Fee payable by the Client on or at any time after the day on which the Applicant accepts any offer of an Engagement, or where a third party Engages an Applicant as referred to in section 5, above.

6.2. Should an invoice remain unpaid in whole or in part for 14 days or more after the due date, the Client shall lose all rights to claim a rebate under clause 7.

6.3. In the event that a Client fails to inform the Company of the acceptance by the Applicant of any offer of Engagement (as outlined in clause 5 above) the Client will be liable for interest on the Introduction Fee due from the date on which such acceptance was communicated by the Applicant.

7. **Refunds & Rebates**

7.1. Subject to section 7.2, below, if the Engagement terminates within six weeks of its commencement, the Client will be entitled to a full refund in respect of the Introduction Fee subject to the deduction by the Company of an administration fee of $250 plus all applicable taxes. For the avoidance of doubt, the Retainer Fee shall not be refunded. However, should the Client wish for the Company to find a Replacement Applicant, no new Retainer Fee shall be required, but a new Introduction Fee shall be agreed in writing between the parties prior to the search for a Replacement Applicant.

7.2. A refund will not be paid where: (i) an invoice remains unpaid in whole or in part for 14 days or more after its due date; or (ii) an Engagement has been terminated by reason of redundancy or for any unlawful reason or without reasonable cause. In addition, the amount of any such rebate shall be immediately repayable by the Client if, within the period of six months from such termination of the Engagement, the Applicant is subsequently re-Engaged by the Client (or, where the Client is a company, by any member of such Client's Group).

8. **Liability**

8.1. The Company shall not be liable under any circumstances whether in contract, tort (including negligence), breach of statutory duty, or otherwise 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 (i) the Company seeking an Applicant for the Client, or (ii) the Introduction to or Engagement of any Applicant by the Client, or (iii) the failure of the Company to introduce any Applicant, or (iv) any act or omission of any Applicant (whether willful, negligent, fraudulent, reckless or otherwise). Nothing in this Agreement shall limit or exclude the Company's 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.

8.2. The Client shall indemnify and hold harmless the Company from and against all liabilities, claims, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses, suffered or incurred by the Company arising out of or in connection with (i) the Client's breach or negligent performance or non-performance of the terms of this Agreement; (ii) introduction by Company of an Applicant to the Client; (iii) the hiring, firing or refusal to accept for hiring any Applicant introduced to Client by the Company; or (iv) the Company's enforcement of these Terms.

8.3. Subject to section 8.1, above, the Company's total liability to the Client shall not exceed the amount of the Retainer Fee actually paid by the Client. The Company's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement

9. **Early Termination Between the Parties**

9.1. Without affecting any other right or remedy available to it under the Terms and Conditions with respect to a Member, either party may terminate this Agreement concerning Recruitment Services by giving written notice to the other party if:

9.2. The other party commits a material breach of any term of this Agreement (if such breach is remediable) and fails to remedy that breach within 7 days of receipt of notice in writing to do so;

9.3. The other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

9.4. If this Agreement is terminated in accordance with this section 9, the parties shall act in good faith to calculate a pro-rata amount of fees and charges that are payable by the Client to the Company. In any event, the Retainer Fee shall not be refunded.

9.5. It is at the absolute discretion of the Company to accept or refuse to perform searches for employment on behalf of a Client. If prior to or during a search, the Company wishes to terminate its Services under this Agreement, it may do so for convenience upon 7 days' notice to Client. No Introduction Fee will be payable unless an offer of Engagement or Engagement has been made under this Agreement.

10. **Confidentiality**

10.1. Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by section 10.2, below.

10.2. Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this section 10.2*;* and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

11. **Data Protection**

Clients should refer to the Company's Privacy Policy for information on how the Company uses and protects Members' and Clients' personal information provided to the Company.

12. **No Partnership or Agency**

12.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties or authorize any party to make or enter into any commitments for or on behalf of any other party except as established herein for the purpose of Introducing an Applicant for Engagement in employment.

12.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person. This Agreement is not intended to, and shall not, create any third-party beneficiary rights in any entity or individual not a party hereto.

13. **Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

14. **Force Majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement, if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of force majeure delay or non-performance continues for more than 2 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party. For the avoidance of doubt, inability to make payment of sums due shall not be considered a force majeure delay.

15. **Severance**

15.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

15.2. If any provision or part-provision of this Agreement is deemed deleted under clause 15.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. **Governing Law**

This Agreement is governed by and construed in accordance with the laws of the State of New York without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. The Company and Client, hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in the State of New York, County of New York for the purposes of adjudicating any matter arising from or in connection with this Agreement except, however, for those matters to be arbitrated.

17. **Jurisdiction**

Any dispute or controversy between the Client and the Company arising out of, relating to, or associated with this Agreement (and the terms and provisions contained therein), or the breach thereof, shall be submitted to and determined by arbitration in the State of New York, County of New York, pursuant to the rules of the American Arbitration Association. The determination of the arbitrators shall be final, binding and conclusive upon all parties and may be enforced not only in the courts of the State of New York, County of New York, to which jurisdiction the parties hereto agree to submit, but in any court of competent jurisdiction. Notwithstanding the foregoing, any party hereto may seek interim or provisional equitable relief in a court located in the State of New York, County of New York, prior to the commencement of an arbitration proceeding without waiving such party's right to demand or proceed to arbitration herein, in order to enjoin the breach or threatened breach of any of the terms and provisions hereunder. The arbitrator or arbitrators sitting in any dispute or controversy arising hereunder shall not have the authority or the power to modify or alter any express condition or provision of this Agreement, to render an award which by its terms has the effect of altering or modifying any express condition or provision of this Agreement, and the arbitrators' failure to comply with this provision shall constitute grounds for vacating an award.