

## SECTION E – JOB ADVERTISEMENTS SPECIFIC TERMS

### 1. DEFINITIONS AND INTERPRETATION

- In this Section E the following words and expressions have the following meanings unless inconsistent with the context:

<b>“Advertisement”</b>	an advertisement to be hosted on the Jobs Portal on behalf of the Customer which forms the Deliverables as set out in the Contract Details;
<b>“Applicant”</b>	any individual who applies for a job with the Customer through the Advertisement, whether or not they are subsequently employed by the Customer;
<b>“Jobs Portal”</b>	the portal for job advertisements hosted by TPI at <a href="http://www.tpi.org.uk/jobs">www.tpi.org.uk/jobs</a> ;

- The words **“appropriate technical and organisational measures”**, **“Controller”**, **“Data Subject”**, **“Personal Data”**, **“Personal Data Breach”**, **“processing”** and **“Processor”** shall have the meanings given to them in the Data Protection Legislation.

### 2. ADVERTISEMENTS

- TPI shall host the Advertisement on the Jobs Portal for the Term, unless this Contract is terminated earlier in accordance with any of the terms of this Contract.
- The Customer acknowledges that TPI is responsible for hosting the Jobs Portal and the Advertisement only, and shall have no obligation to the Customer in respect of marketing or promoting the Advertisement, communicating with or vetting Applicants for the Customer or guaranteeing any minimum number of Applicants respond to the Advertisement.
- The Customer shall provide the proposed Advertisement to TPI for approval, including details of:
  - the role being advertised;
  - the name and business of the Customer
  - contact details which an Applicant may use to contact the Customer;
  - the start and duration of the Advertisement; and
  - the text of the proposed Advertisement.
- Subject to payment of the Price in cleared funds by the Customer, TPI shall (acting in its sole discretion), within 5 Working Days of receiving

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the Customer's proposed Advertisement, confirm in writing whether the proposed Advertisement is approved. If TPI does not approve a proposed Advertisement within 5 Working Days of receipt, it shall be deemed not approved.

- If TPI approves a proposed Advertisement in accordance with Condition 2.4 of this Section E, TPI shall commence publication of the Advertisement on the Jobs Portal within 2 Working Days.
- If TPI does not approve a proposed Advertisement in accordance with Condition 2.4 of this Section E, TPI may propose amendments to the proposed Advertisement but the Advertisement as amended shall not be deemed approved unless resubmitted for approval by the Customer in accordance with Condition 2.3 of this Section E and approved by TPI in accordance with Condition 2.5 of this Section E.
- The Customer shall ensure that the Advertisement shall:
  - not contain any information which is inaccurate, incomplete or incorrect;
  - comply with any policies or guidelines notified to the Customer by TPI from time to time;
  - comply with all Applicable Law and any other applicable laws, regulations, regulatory policies, guidelines or codes in each case from time to time in force, including all such guidelines and codes issued by statutory, regulatory and industry bodies;
  - not infringe the Intellectual Property Rights or proprietary rights of any third party;
  - not contain any personal data without the permission of the data subject to whom the personal data relates;
  - not be defamatory, libellous, obscene or otherwise offensive;
  - not cause, or be likely to cause, any damage to or have an adverse impact on, TPI's reputation, Intellectual Property Rights or goodwill; and
  - not include any element that is designed to, intended to, or which could otherwise have the effect of, causing damage to the Jobs Portal, TPI's website or TPI.
- TPI shall be entitled to remove or modify an Advertisement where in TPI's reasonable opinion it ceases to comply with the requirements of Condition 2.7 of this Section E.
- If the Customer requests any modification of an Advertisement after it has been published, such modification shall be requested and agreed in accordance with Condition 5 of Section A.

### 3. INDEMNITY AND WARRANTY

- The Customer shall indemnify TPI against all liabilities, 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 TPI arising out of or in connection with any third-party claims or any action, adjudication or decision taken against TPI by any third party or regulatory body, in each case directly or indirectly arising (in whole or in part) as a result of TPI's hosting of the Advertisement, including but not limited to any claim from an Applicant.
- Subject to Condition 3.3 of this Section E, TPI warrants that:
  - the Advertisement will be published on the Jobs Portal for the Term;
  - the Jobs Portal will be maintained and reasonably available (save for reasonable periods of downtime for maintenance) during the Term; and
  - the Advertisement will upon publication on the Jobs Portal be materially the same as the Advertisement approved in accordance with Condition 4.5 of this Section E.
- The Customer agrees that:
  - there may be variations in the appearance, colour, formatting or font of the Advertisement when published on the Jobs Portal;
  - the appearance of the Advertisement may vary when displayed on a screen;
  - the Customer shall be responsible for any typographical, clerical or other omission or error in any Advertisement and TPI is not responsible for the identification or correction of any omission or error, save where such omission or error is not present in the Advertisement when approved by TPI in accordance with Condition 4.5 of this Section E; and
  - the Jobs Portal may be temporarily unavailable as a result of hardware, software or server outages or failure, reduced bandwidth, internet outages and other technical or non-technical issues,

and that such shall not be considered a breach of warranty.

- Subject as expressly provided in this Contract, TPI excludes all warranties, conditions or other terms implied by statute or common law to the fullest

extent permitted by law, including but not limited to in relation to the Advertisements.

- Where any valid warranty claim in respect of an Advertisement is made by the Customer, TPI shall be entitled at its option to:
  - provide for a corrected Advertisement to be published for such additional time as the original Advertisement was published and did not comply with the warranty; or
  - at its' sole discretion, refund to the Provider the Price (or a proportionate part of the Price) for the Advertisement found not to conform to warranty,

and such shall be the extent of TPI's liability in respect of such warranty claim.

#### 4. APPLICANTS

- TPI does not guarantee that the Customer will receive any Applicants or that the Advertisement will reach any prospective Applicants who would be suitable for the Customer's requirements. The Customer is solely responsible for determining whether the Jobs Portal is an appropriate location for the Advertisement.
- The Customer shall be responsible for managing communications with any Applicant and ensuring that any contact details provided by the Customer remain active for the use of Applicants.
- TPI shall not be responsible for facilitating any communication between the Customer and any Applicant.
- TPI shall have no responsibility for the Applicants or any decision made by the Customer to recruit or hire any Applicant.

#### 5. DATA PROTECTION

- The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and TPI is the Processor. Appendix 1 sets out the scope, nature and purpose of processing by TPI, the duration of the processing and the types of Personal Data and categories of Data Subject.
- Without prejudice to the generality of Condition 10 of Section A, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to TPI and/or lawful collection of the Personal Data by TPI on behalf of the Customer for the duration and purposes of this Contract.
- Without prejudice to the generality of Condition 10 of Section A, TPI shall, in relation to any Personal Data processed in connection with the performance by TPI of its obligations under this Contract:

- process that Personal Data only on the documented written instructions of the Customer unless TPI is required by Applicable Laws to otherwise process that Personal Data. Where TPI is relying on Applicable Laws as the basis for processing Personal Data, TPI shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit TPI from so notifying the Customer;
- ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - the Customer or TPI has provided appropriate safeguards in relation to the transfer;
  - the Data Subject has enforceable rights and effective legal remedies;
  - TPI complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - TPI complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - notify the Customer without undue delay on becoming aware of a Personal Data Breach;
  - at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
  - maintain complete and accurate records and information to demonstrate its compliance with this Condition 5.3 of this Section E; and
  - promptly inform the Customer if, in the opinion of TPI, an instruction infringes the Data Protection Legislation.
- The Customer consents to TPI appointing the third party processors set out in Appendix 1 or TPI's external privacy policy, accessible at [www.tpi.org.uk/privacy-policy/](http://www.tpi.org.uk/privacy-policy/), as third party processors of Personal Data under this Contract. TPI confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause and which will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and TPI, TPI shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Condition 5.4 of this Section E.
  - TPI may, at any time on not less than 30 days' notice, revise this Condition 5 of this Section E by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## 6. INTELLECTUAL PROPERTY

- The Customer shall be entitled to download and maintain copies of the Advertisement but shall not be entitled to download or keep copies of any other element of the Jobs Portal or the TPI website, or any other aspect of TPI's Intellectual Property Rights.
- By submitting the Advertisement, the Customer grants TPI a non-exclusive, royalty free, transferable licence to use, reproduce, display,

distribute, modify and create derivative works from any of the Customer's Intellectual Property Rights in the Advertisement for the purposes of hosting and advertising the Advertisement for the Customer.

## 7. LIMITATION OF LIABILITY

- Except as expressly and specifically provided in these Conditions:
  - the Customer assumes sole responsibility for results obtained from the use of the Deliverables by the Customer, and for conclusions drawn from such use. TPI shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to TPI by the Customer in connection with the Deliverables, or any actions taken by TPI at the Customer's direction;
  - all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Laws, excluded from the Contract; and
  - the Deliverables are provided to the Customer on an "as is" basis.
- Subject to Condition 11 of Section A and Condition 7.1 of this Section E, TPI's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the greater of:
  - £10,000; or
  - the Price.