

# Employment4students.co.uk Ltd

## General Terms and Conditions

These Terms and Conditions apply to your use of the Websites and/or Services provided by Employment4students.co.uk Ltd (co. reg. no.04012715 whose registered office address is situated at 2D Station Yard, Thame, Oxfordshire OX9 3UH) ("e4s"). Please read these Terms and Conditions carefully before using the Websites and/or ordering any Services. By using the Websites and/or ordering any Services, you agree to be bound by these Terms and Conditions.

### 1. DEFINITIONS

- 1.1. In these Terms and Conditions, the following definitions shall apply:
  - 1.1.1. "Additional Services" any additional services made available by e4s from time to time.
  - 1.1.2. "Advertisement" the Customer's job vacancy details submitted for and/or posted to the Websites.
  - 1.1.3. "Agreed Services" is defined in clause 1.2 of Schedule 1.
  - 1.1.4. "Agreement" these Terms and Conditions together with the Schedules, Order, Confirmation of Order, Privacy Policy and Cookie Policy.
  - 1.1.5. "Confidential Information" all information (whether oral, written or in documentary or electronic form) given by one party to the other or otherwise obtained by that party in connection with the other's business, affairs, finance, technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party, its employees, clients or subcontractors and any information which is regarded or could reasonably be regarded as confidential including without limitation methodology, technology, passwords and this Agreement.
  - 1.1.6. "Contract Term" the period as specified in the Order subject to clause 2.2 below.
  - 1.1.7. "Cookie Policy" the cookie policy which can be found on the Websites.
  - 1.1.8. "Customer" means the contracting party as set out in the Order.
  - 1.1.9. "Fees" the fees set out in the Order.
  - 1.1.10. "Intellectual Property Rights" all patents, registered or unregistered trademarks, trade and business names, logos and devices, registered or unregistered designs, registered or unregistered copyrights (including design copyrights), database rights and moral rights, applications for any of the foregoing and the right to apply for them in any part of the world, discoveries, creations, inventions or improvements on or additions to a creation or an invention, Confidential Information, trade secrets and know-how and any similar rights in any country.
  - 1.1.11. "Jobsite" means the jobsite website developed and maintained by e4s for and on behalf of the Customer
  - 1.1.12. "Order" a request for Services completed by the Customer either online or by returning a signed hard copy of the e4s order form incorporating these Terms and Conditions.
  - 1.1.13. "Privacy Policy" the privacy policy which can be found on the Websites.
  - 1.1.14. "Profile" the Customer's profile submitted for and/or posted to the Websites.
  - 1.1.15. "Secure Data" User and the Customer data held on the servers managed by e4s.
  - 1.1.16. "Services" the services described in the Order.
  - 1.1.17. "System" the online recruitment management system for User Handling using e4s' proprietary software.
  - 1.1.18. "Users" (i) in relation to the Websites, the users of the Websites other than the Customer; and (ii) in relation to the System and the Jobsite, the candidates using the System or the Jobsite to apply for job vacancies with the Customer.
  - 1.1.19. "User Handling" the processing, administration, reporting and general management of the Customer's internal recruitment process and User Records.
  - 1.1.20. "User Records" any information or data recorded on the System or Jobsite by the Customer or User including but not limited to the Secure Data.
  - 1.1.21. "Third Party Partner" any person, company, organisation or firm who has a contractual relationship with e4s from time to time other than the Customer.
  - 1.1.22. "Websites" the websites managed by Employment4students.co.uk Ltd, including but not limited to [www.e4s.co.uk](http://www.e4s.co.uk) and [www.ukparttimejobs.co.uk](http://www.ukparttimejobs.co.uk)
- 1.2. Any references to clauses are references to clauses in these Terms and Conditions.
- 1.3. Any reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.4. Any reference to "written" or "in writing" shall include emails.
- 1.5. Any reference to "person" shall include any person, partnership, firm, company, limited liability partnership, body corporate, corporation or organisation.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

- 1.7. The headings in these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of the Terms and Conditions.
- 1.8. Unless e4s explicitly states otherwise, any new services or features that augment or enhance the Services will be subject to this Agreement.

## **2. SERVICES**

- 2.1. e4s shall provide the Services subject to the provisions of this Agreement and the applicable Schedules relevant to the Services ordered by the Customer.

## **3. PRICES**

- 3.1. The prices payable by the Customer shall be as set out under the Schedules, relevant to the Services ordered by the Customer.

## **4. PAYMENT**

- 4.1. The payment terms shall be as set out under the Schedules, in addition to this clause.
- 4.2. All invoices are to be settled within 28 days of the date of the respective invoice without setoff, counterclaim or deduction.
- 4.3. All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which, if applicable, shall be charged in addition at the rate in force at the date any payment is due.
- 4.4. Where the Customer defaults in making payment of any Fee by the due date, e4s shall be entitled to:
  - 4.4.1 charge interest on any payment outstanding at the rate of 2% per annum above Barclays Bank Plc base rate from time to time from the date payment became due until actual payment is made irrespective of whether the date of payment is before or after any judgment or award;
  - 4.4.2 suspend access to the Websites;
  - 4.4.3 cease provision of the Agreed Services, the System or the Jobsite as applicable;
  - 4.4.4 terminate this Agreement.

## **5 INDEMNITIES AND LIABILITY**

- 5.1. e4s shall not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Websites, the Services, the System, the Jobsite or the Customer's use of them or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law. To the extent permitted, e4s disclaims and excludes all warranties with respect to the Websites, the Services, the System the Jobsite or their use thereof, either express or implied, including but not limited to any implied warranties of suitability or fitness for particular purpose. Notwithstanding the generality of the above, e4s expressly excludes liability for any indirect, special, incidental, consequential or economic loss or damage which may arise in respect of the Websites, the Services, the System, the Jobsite or their use or in respect of equipment or property (including but not limited to any damages payable to a third party, loss of profits, business, revenue, goodwill, anticipated savings or wasted resources) suffered by the Customer.
- 5.2. The Customer acknowledges that software and internet-based services are not error-free and uninterrupted and agrees that the existence of such errors and interruptions shall not constitute a breach of this Agreement. e4s shall not be responsible for any technical malfunction of any communications network or any late, lost, incorrectly submitted, delayed, ineligible, incomplete, corrupted or misdirected Order or communication whether due to error, transmission interruption or otherwise. Where the Websites or Jobsite requires maintenance and upgrading as deemed necessary by e4s in its sole discretion, e4s shall have no liability whatsoever for a situation where the Agreed Services, the Websites or the Jobsite become inaccessible to the Customers or Users during such period of maintenance and upgrading.
- 5.3. The Customer shall indemnify and hold e4s harmless from and against all claims, loss, damage, cost, liability or expense (including legal and professional fees), infringement of third party intellectual property right or third party losses by reason of or arising out of any breach by the Customer of the terms of this Agreement and Schedules.
- 5.4. If the Customer discovers a material error in the Websites, the Services, the System or the Jobsite which substantially affects the Customer's use of the same and notifies e4s of the error within 30 days from the date of this Agreement, e4s's obligation shall be limited to using its reasonable endeavours to remedy any deficiencies in the affected part of the System, or at its discretion, to cancelling, crediting or refunding the Fees from the Customer provided that such non-compliance has not been caused by any incorrect use, abuse or corruption of the Websites, the System, or the Jobsite or by use of the Websites, the System or the Jobsite with other software or on equipment which is it incompatible. The obligation to correct defects or cancel, credit or refund a proportionate part of the Fees payable by the Customer shall subject to clause 5.5. constitute the full extent of e4s' liability in respect of any loss or damage sustained by the Customer whether caused by breach of this Agreement, misrepresentation, negligence of e4s (or its employees or agents) or from any other cause.
- 5.5. In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason, the aggregate liability (including interest) of e4s under this Agreement shall be limited to the total Fees received by e4s from the Customer under this Agreement.
- 5.6. Nothing in this Agreement shall limit the liability of either party for death or personal injury arising out of its or that of its employees', agents' or sub-contractors' negligence or for fraud or dishonesty to the extent it cannot do so by law.

## **6. TERM AND TERMINATION**

- 6.1. This Agreement shall terminate at the end of the Contract Period or the Licence Period, whichever is the later unless otherwise terminated in accordance with this Agreement.
- 6.2. Without prejudice to any other rights or remedies available to either party, either party to this Agreement shall be entitled to terminate this Agreement immediately by written notice to the other at any time in the event that:
  - 6.2.1. either party fails to pay any sums due under this Agreement;
  - 6.2.2. either party commits a material breach of any of the provisions of this Agreement and where capable of remedy, fails to remedy the breach within 7 days after receipt of written notice giving full particulars of the breach and requiring it to be remedied;
  - 6.2.3. either party becomes insolvent or if an order is made or a resolution is passed for the winding up of either party, or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of either party's assets or business, or if either party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt or if either party ceases or threatens to cease to carry on business.
- 6.3. e4s shall be entitled to terminate this Agreement immediately by written notice to the other party at any time in the event that e4s reasonably believes that the Employer is using the Website, the System, the Services or the Jobsite improperly, or in bad faith, or with the intention of damaging the reputation of e4s.
- 6.4. On termination of this Agreement:
  - 6.4.1. the Customer shall cease having access to the Website, the System, the Services and the Jobsite (as applicable);
  - 6.4.2. the Customer shall pay any outstanding Fees immediately on demand;
  - 6.4.3. subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination neither party shall have any further obligations to the other under this Agreement.
- 6.5. In the event that the Agreement is terminated, if requested, e4s shall make available to the Customer one backup of the User Records in relation to the System and User Records and job advertisements in relation the Jobsite and any other content owned by the Customer as applicable.

**7. FORCE MAJEURE**

- 7.1. Neither party shall be liable in any way for failure or delay in performing its obligations under this Agreement if the failure or delay is due to causes outside the reasonable control of the party in default provided that each party shall take all reasonable steps to avoid or limit any delay caused. For the avoidance of doubt, failure to pay is not a Force Majeure.

**8. CONFIDENTIAL INFORMATION**

- 8.1. Except as provided in clause 8.2, 8.3 and 9, a party receiving Confidential Information ("Receiving Party") shall keep the Confidential Information confidential and shall not without the consent of the party disclosing the Confidential Information ("Disclosing Party") disclose it to any person or use it for any purpose other than the performance of its obligations under the Agreement.
- 8.2. The Receiving Party may disclose Confidential Information to any governmental or other authority or regulatory body, or any employees, agents or sub-contractors only to the extent that is necessary for the purposes of the Agreement or as required by law and subject to the Receiving Party using its best endeavours to ensure that the person in question keeps the same confidential.
- 8.3. The obligations under this Agreement shall not apply to any Confidential Information coming into or already in the public domain otherwise as a result of a breach by the Receiving Party of the terms of this clause or to the extent the Receiving Party is required by law to disclose such Confidential Information.

**9. INTELLECTUAL PROPERTY, DATA AND THE PUBLICATION OF INFORMATION**

- 9.1. The Customer agrees that e4s may use the Customer's name, trademarks and logos only for the purposes of providing the Services and the Jobsite for the duration of this Agreement.
- 9.2. e4s reserves the right to communicate information to and receive feedback from Customers, Users or third parties from time to time. The Customer grants to e4s a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or incorporate into the System or Jobsite any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or its Users or third parties.
- 9.3. The Customer shall indemnify e4s fully against all liabilities, costs and expenses which e4s may incur as a result of work done in accordance with the Customer's specifications involving infringement of any Intellectual Property Right or other proprietary right of third parties.
- 9.4. e4s reserves the right to use such information and any information collected on the System or the Jobsite for the purposes of identifying and/or publishing statistical information relating to User applications for positions provided that the use of such information is processed in accordance with the Data Protection Act 1998.

**10. GENERAL**

- 10.1. Either party may assign, delegate, sub-contract, charge, mortgage or otherwise transfer any or all of its rights or obligations under this Agreement in whole or in part with the other party's prior written consent.
- 10.2. No variation, amendment or waiver of the Agreement shall bind either party unless made in writing and signed by duly authorised officers of both parties
- 10.3. In the event of a conflict between the documents that form this Agreement, the following order of priority shall apply and take control and precedence but the terms and provisions of this Agreement are not otherwise amended, waived or released (1) Order, (2) Terms and Conditions, (3) Schedules (4) Customer Terms and Conditions (5) Privacy Policy and (6) Cookie Policy.

- 10.4. No exercise or failure to exercise or delay in exercising any right power or remedy vested in either party under or pursuant to this Agreement shall constitute a waiver by either party or any other right power or remedy. Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same.
- 10.5. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement as far as possible without modifying the remaining provisions of this Agreement.
- 10.6. This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements and understanding whether oral or written with respect to that subject matter.
- 10.7. Except as provided in this Agreement no term is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 10.8. This Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.
- 10.9. Any notice under this Agreement shall be deemed to have been validly given if served personally on the other or if sent by first-class pre-paid post to the other's last known address. If sent by first class pre-paid post the notice shall be deemed to have been received 2 working days after the date of posting. If any such notice or other information is given by means of facsimile or email, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours or if sent outside normal working hours on the next working day.

## SCHEDULE 1- ADVERTISING SERVICES

The terms in this Schedule apply in addition to the General Terms and Conditions to Customers purchasing the advertising service from e4s as set out in the Order.

### 1. SERVICES

- 1.1. e4s shall provide the Services subject to the provisions of the Agreement.
- 1.2. The Contract Term shall not begin and e4s shall not commence any Services until:
  - 1.2.1. the Order has been submitted by the Customer either electronically or in a hard copy form confirming, to the satisfaction of e4s, that these Terms and Conditions shall apply, by way of online confirmation or signature under hand;
  - 1.2.2. the Order is accepted by e4s by email confirmation or provision of purchase order number; and
  - 1.2.3. payment for the Order has been received and cleared.
- 1.3. e4s may, to such extent as it thinks fit (in its absolute discretion) waive any of the conditions in clause 1.2 without prejudice to its rights under the rest of this Agreement.
- 1.4. If any Agreed Services are not used within the Contract Term, they may not be carried over into any subsequent period without e4s's prior written consent.

### 2. PRICES

- 2.1. The Fees are as specified on the Websites. Any discounts agreed with the Customer are at the sole discretion of e4s and may not be disclosed by the Customer to any other person.
- 2.2. The Fees may vary from time to time and any such price changes shall take effect on expiration of the Contract Term.
- 2.3. Any Additional Services shall be subject to such fees as agreed between the parties.

### 3. PAYMENT

- 3.1. The Customer shall pay the Fees for the Agreed Services in advance in accordance with paragraph 1.2 unless otherwise agreed under paragraph 1.3.

### 4. WEBSITE CONTENT

- 4.1. The Customer acknowledges that e4s may, at its discretion and without any liability, remove from the Websites any Profile, Advertisement or content on any grounds that e4s deems reasonable and/or is posted in breach of the rules in paragraph 4.2 which may be updated by e4s from time to time. It is the Customer's responsibility to ensure compliance at all times.
- 4.2. The rules:
  - 4.2.1. No duplication of profiles, job vacancies or content.
  - 4.2.2. No gratuitous use of keywords. Gratuitous means deliberately inserting words, word strings or repeating job titles with the intention of influencing priority in the results listing, or increasing the number of page views.
  - 4.2.3. Profiles, job advertisements and content submitted for the Websites must be for genuine Customers' opportunities and vacancies only, and not for other products or services, either relating to or unrelated to recruitment including, but not limited to, affiliate schemes, pyramid selling schemes or any other business opportunity.
  - 4.2.4. URLs or email links (live or text only) are not permitted in the body of the profile or job description page.
  - 4.2.5. Profiles, Advertisements or content which discriminate on grounds of sex, race or disability are illegal and shall not be accepted. Such Profiles, Advertisements or content may be accepted by e4s if the Customer confirms that any requirement or qualification which may appear to discriminate illegally is in compliance with an applicable exemption available under the relevant legislation. Notwithstanding any such confirmation, if e4s believes that a Profile, Advertisement or content may be discriminatory, e4s may at its sole discretion amend the Profile, Advertisement or content or remove it from the Websites entirely without any liability or obligation to the Customer.
- 4.3. Notwithstanding clause 4.2. e4s reserves the right to refuse any proposed Advertisements and/or content, or remove any Advertisements and/or content already posted, if illegal or amoral, or on any other grounds that e4s deems reasonable, including, but not limited to:
  - 4.3.1. Advertisements or content for escort and/or adult and/or gambling industry work;
  - 4.3.2. Advertisements or content where candidates are required to send money and/or self addressed envelopes for information and/or as part of the application process;
  - 4.3.3. Advertisements or content requiring an upfront payment or consideration of any kind;
  - 4.3.4. Advertisements or content posted by any Customer who has registered using a generic e-mail address (e.g. hotmail, gmail, yahoo) and/or a mobile phone number where e4s cannot verify its authenticity to e4s's satisfaction;
  - 4.3.5. Advertisements or content that contain links to other websites offering job posting facilities or contains content or links to a site which, in e4s's opinion, is defamatory, illegal or objectionable or will bring e4s's reputation into disrepute.

- 4.4. The Customer shall be responsible for the content of any information and/or material supplied to e4s and for ensuring that it has the right to do so and that it complies with all relevant legislation and codes of practice. If e4s receive complaints about any information and/or its material and/or its content e4s may, at its sole discretion, remove such information, material or content from the Websites without any reference or liability to the Customer.
- 4.5. If the Advertisement or content links to another site via an external apply online option, the Customer is responsible for maintaining the links and the content of the linked site.
- 4.6. Any Profile, Advertisement and/or content may also appear on Third Party Partner recruitment websites if e4s is requested to use Third Party Partner websites by the Customer as part of the Agreed Services.
- 4.7. If the Customer is an employment agency or an employment business (as defined by the Employment Agencies Act 1973) it is the Customer's responsibility to ensure the Advertisements comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

## **5. OBLIGATIONS AND WARRANTIES**

- 5.1. e4s shall use reasonable endeavours to:
  - 5.1.1. make the Websites available to the Customer and to Users via the internet and where routine maintenance requires the interruption or suspension of the Websites, to restore access to the Websites as soon as practicable;
  - 5.1.2. ensure that the servers have adequate capacity and bandwidth to support the usage of the Websites by the Customer and Users at a level in accordance with generally accepted standards of availability for similar services operating via the internet.
- 5.2. The Customer shall:
  - 5.2.1. act in good faith at all times and deal fairly and professionally with any individuals who may respond to any Advertisement or content and ensure that any data received in response to any Advertisement or content is used only for legitimate recruitment purposes and in compliance with the Data Protection Act 1998;
  - 5.2.2. not do anything which may bring e4s's reputation into disrepute;
  - 5.2.3. ensure that the content of any proposed Profile or Advertisement or any other information is true, accurate and not misleading and does not infringe on the rights of any third party and not contain any material that is offensive, discriminatory or of a nature that e4s may reasonably deem unsuitable for the general public;
  - 5.2.4. ensure that any information submitted to e4s is relevant, accurate and up to date and notify e4s immediately if there are any material changes to the same.
- 5.3. e4s reserves the right to request further details on any information or content that is submitted by the Customer. It is the responsibility of the Customer to respond to any such requests promptly to the satisfaction of e4s.
- 5.4. Each party shall safeguard the other's Intellectual Property Rights and Confidential Information in accordance with clauses 8 and 9 of the General Terms and Conditions and in particular the Customer shall:
  - 5.4.1. monitor compliance with this Agreement and immediately on becoming aware of any unauthorised use of the Website or other breach of this Agreement, inform e4s and take all appropriate steps to ensure such activity ceases and prevent any recurrence;
  - 5.4.2. ensure that passwords or other access information is not divulged to any third party, including those who are no longer employed or contracted by the Customer;
  - 5.4.3. to the extent practicable, keep full and up-to-date records of everyone who has access to the Customer account and their access details;
  - 5.4.4. ensure that only Customer representatives are permitted access to Confidential Information, and to comply with the Data Protection Act 1998 at all times;
  - 5.4.5. investigate immediately on e4s' written notice to the Customer of any unusual activity.

## **6. ADDITIONAL INDEMNITIES AND LIMITATION OF LIABILITY**

- 6.1. The Customer acknowledges that e4s acts as an advertising medium only and cannot guarantee or be held liable in respect of either the level of response to any Advertisement or the quality of any individuals responding to any Advertisement. It is the Customers' responsibility to carry out such checks and procedures as is necessary to ensure that candidates are suitable for the job advertised and have the required qualifications and personal characteristics. e4s expressly does not warrant that any result or objective shall be achieved, be achievable or be attained at all or by a given date under this Agreement.
- 6.2. Any contact between the Customer and any individuals responding to any Advertisement is the sole responsibility of the Employer. E4s has no control over such contact and shall have no liability whatsoever in respect of the same.

## SCHEDULE 2- PROVISION OF APPLICANT TRACKING SYSTEM (ATS)

The terms in this Schedule apply in addition to the General Terms and Conditions to Customers purchasing the ATS System from e4s as set out in the Order.

### 1. LICENCE

- 1.1. Subject to the provisions of this Agreement, e4s hereby grants to the Customer a non-exclusive and non-transferable right to use the System for User Handling ("Licence").
- 1.2. The Licence shall commence on the Customer System account going live, and shall continue for such period as specified in the Order ("Licence Period"), subject to early termination under clause 6.1 of the General Terms and Conditions, after which it shall expire unless renewed by the Parties for a further licence period.
- 1.3. The Licence Period shall not begin until:
  - 1.3.1 the Order has been submitted by the Customer either electronically or in a hard copy form confirming, to the satisfaction of e4s, that these Terms and Conditions shall apply by way of online confirmation or signature under hand;
  - 1.3.2 the Order is accepted by e4s by email confirmation or provision of purchase order number.
- 1.4 e4s may, to such extent as it thinks fit (in its absolute discretion) waive any of the conditions in paragraph 1.3 or without prejudice to its rights under the rest of this Agreement.

### 2. THE SYSTEM

- 2.1. The Customer acknowledges that it is responsible for all equipment and software necessary to connect to the internet and acknowledges that DS, cable, fibre optic or other high speed internet connection is required for the proper performance of the System.
- 2.2. Modifications requested by the Customer to the standard functionality of the System will not normally be accepted by e4s. Where e4s does accept such a request:
  - 2.2.1. the Customer shall pay additional Fees in accordance with paragraph 3.3.; and
  - 2.2.2. the Customer acknowledges that it will accrue no Intellectual Property Rights in the System as a result of any modification and any such Intellectual Property Rights shall be deemed to have been assigned to e4s at no cost and the Customer shall execute such documents as is necessary in order for this to take effect for the benefit of e4s.

### 3. FEES

- 3.1. The Customer shall pay the Fees in accordance with the Order. The Fees may vary from time to time and any such price changes shall take effect on expiration of the Licence Period. Any discounts agreed with the Customer are at the sole discretion of e4s and may not be disclosed by the Customer to any other person.
- 3.2. All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which, if applicable, shall be charged in addition at the rate in force at the date any payment is due.
- 3.3. Where the Customer requests specific modifications under paragraph 2.3, the Fee will be uplifted by an amount to be agreed of the e4s developer time required to deliver the requested modifications ("Uplifted Fee"). The Uplifted Fee shall be payable in advance.
- 3.4. The Customer shall be responsible for any and all agreed expenses incurred by e4s in relation to the provision of the System under this Agreement and shall indemnify e4s for any such expenses.

### 4. PERMITTED USES

- 4.1. Subject to paragraph 5, the Licence permits the Customer to:
  - 4.1.1. access the System for the purpose of User Handling;
  - 4.1.2. display, download, print or otherwise manipulate the Secure Data included in the System for its internal business purposes of User Handling; and
  - 4.1.3. post job advertisements on to the System.

### 5. PROHIBITED USES

- 5.1. The Customer shall not:
  - 5.1.1. provide, by electronic means or otherwise, access to the System, User Records or Secure Data to any person who has not been authorised by e4s to have access to the System.
  - 5.1.2. copy the software of the System nor translate, adapt, vary or modify the System software nor disassemble, decompile or reverse engineer the System software and not create any software which is substantially similar to the System software nor use it in any manner which would be restricted by copyright; or
  - 5.1.3. be involved in the creation and/or operation (or assist in any way in the creation and/or operation) of services competitive or potentially competitive, to those supplied by e4s under this Agreement.
- 5.2. Where the Customer uses the System for any of the prohibited uses detailed above, e4s shall be entitled to terminate the Licence immediately without liability to the Customer and the Customer shall indemnify and hold e4s harmless from and against all claims and losses arising from loss, damage, cost, liability or expense (including legal and professional fees), infringement of third party intellectual property right or third party losses by reason of or arising out of any breach by the Customer of this paragraph 5.

## **6. OBLIGATIONS AND WARRANTIES**

- 6.1. e4s shall use reasonable endeavours to:
- 6.1.1. make the System available to the Customer and Users via the internet and where routine maintenance requires the interruption or suspension of the System, to restore access to the System as soon as practicable;
  - 6.1.2. ensure that the servers have adequate capacity and bandwidth to support the usage of the Customer and Users at a level in accordance with generally accepted standards of availability for similar services operating via the internet;
  - 6.1.3. ensure that the System will materially perform in accordance with any e4s customer guide that is made available to the Customer;
  - 6.1.4. supply a telephone helpdesk Monday to Friday, 9am to 5.30pm, UK time, excluding UK Bank Holidays, and shall respond to support queries submitted by the ATS Customer by telephone, e-mail, letter and fax within those hours; and
  - 6.1.5. on receipt of written notice relating to a malfunction (made by the Customer under paragraph 6.2.6), investigate any such reported malfunction, and if necessary, rectify and correct any such malfunction as soon as practicable.
- 6.2. The Customer shall:
- 6.2.1. act in good faith at all times and deal fairly and professionally with any Users who may respond via the System and ensure that any data received is used only for legitimate recruitment purposes and in compliance with the Data Protection Act 1998;
  - 6.2.2. not do anything which may bring e4s's reputation into disrepute;
  - 6.2.3. ensure that User Records are true, accurate and not misleading and do not infringe on the rights of any third party;
  - 6.2.4. ensure that any information submitted to e4s is relevant, accurate and up to date and notify e4s immediately if there are any material changes to the same.
  - 6.2.5. after completing the Order, respond in a timely and reasonable manner to any of e4s' queries to enable e4s to deliver set up the Customer account for the System;
  - 6.2.6. immediately notify e4s in writing at any time the Customer believes it may have discovered a malfunction in the System;
  - 6.2.7. ensure that no libellous User Records will be maintained within the System
  - 6.2.8. be responsible for all activities that occur under the Customer's accounts.
  - 6.2.9. not use the Service to send unsolicited commercial emails to any person. For the purposes of this agreement unsolicited commercial emails includes any email or other electronic communication that is sent by or at the request of the Customer to a person with whom the Customer has no prior business relationship or has not consented to receiving the communication.
- 6.3. The Customer shall keep all records necessary to enable the verification of its compliance with this Agreement and acknowledges that e4s shall have access to the User's Records during normal business hours, and the right to examine the records on having served reasonable prior written notice. e4s reserves the right to request further details on any information or content that is submitted by the Customer. It is the responsibility of the Customer to respond to any such request promptly to the satisfaction of e4s.
- 6.4. Each party shall safeguard the other's Intellectual Property Rights and Confidential Information in accordance with clauses 8 and 9 of the General Terms and Condition and in particular the Customer shall:
- 6.4.1. monitor compliance with this Agreement and immediately on becoming aware of any unauthorised use of the System or other breach of this Agreement, inform e4s and take all appropriate steps to ensure that such activity ceases and prevent recurrence;
  - 6.4.2. ensure that passwords or other access information is not divulged to any third party, including those who are no longer employed or contracted by the ATS Customer;
  - 6.4.3. to the extent practicable, keep full and up-to-date records of everyone who has access to the ATS Customer account and their access details;
  - 6.4.4. ensure that only ATS Customer representatives are permitted access to Confidential Information, User Records and Secure Data, and to comply with the Data Protection Act 1998 at all times; and
  - 6.4.5. investigate immediately on e4s' written notice to the ATS Customer of any unusual activity.

## **7. ADDITIONAL INDEMNITIES AND LIMITATION OF LIABILITY**

- 7.1. The Customer acknowledges that e4s cannot guarantee or be held liable in respect of either the level of response or the quality of any individuals responding on the System. It is the Customer's responsibility to carry out such checks and procedures as is necessary to ensure that Users are suitable for the job advertised and have the required qualifications and personal characteristics. e4s expressly does not warrant that any result or objective shall be achieved, be achievable or be attained at all or by a given date under this Agreement.
- 7.2. Any contact between the Customer any permitted parties and any User is the sole responsibility of the Customer. E4s has no control over such contact, and shall have no liability whatsoever in respect of the same. The System enables the Customer to include its own User notes to the System and e4s is not responsible for the content of any User notes made by or on behalf of the Customer.

## **SCHEDULE 3- PROVISION OF JOBSITE TO CUSTOMER**

The terms in this Schedule apply in addition to the General Terms and Conditions to Customers purchasing a hosted jobsite from e4s as set out in the Order.

### **1. LICENCE**

- 1.1. Subject to the provisions of this Agreement, e4s hereby grants to the Customer a non-exclusive and non-transferable right to use the jobsite as described in the Order ("Jobsite") for User Handling ("Licence").
- 1.2. The Licence shall commence on the Customer System account going live, and subject to earlier termination under clause 6.1 of the General Terms and Conditions, shall continue for such period as specified in the Order ("Licence Period") after which it will expire, unless renewed by the Parties for a further licence period.
- 1.3. The Licence Period shall not begin until:
  - 1.3.1 the Order has been submitted by the Customer either electronically or in a hard copy form confirming, to the satisfaction of e4s, that these Terms and Conditions shall apply by way of online confirmation or signature under hand;
  - 1.3.2 the Order is accepted by e4s by email confirmation or provision of purchase order number.
- 1.4 e4s may, to such extent as it thinks fit (in its absolute discretion) waive any of the conditions in paragraph 1.3 or without prejudice to its rights under the rest of this Agreement.

### **2. THE JOBSITE**

- 2.1. e4s will develop, and maintain the Jobsite on behalf of the Customer.
- 2.2. The Customer will provide all content for the Jobsite, including input into design to coordinate with its branding and will provide any logos or trade marks which are to appear on the Jobsite in whatever format is requested by e4s.
- 2.3. e4s will provide the Customer with the ability to login to the admin area and control the main content of the content of the Jobsite.
- 2.4. The Customer will sign off the agreed specification of the Jobsite with e4s and after this is signed off, further changes or modifications may result in the completion deadline being delayed and an increase in Fees due to the Customer, as notified in writing by e4s.

### **3. FEES**

- 3.1. The Customer shall pay the Fees in accordance with the Order, at the times set out in the Order.
- 3.2. The Fees may vary from time to time as set out in paragraph 2.4 above and may be revised at the start of any new licence period.

### **4. OBLIGATIONS AND WARRANTIES**

- 4.1 e4s shall use reasonable endeavours to:
  - 4.1.1. make the Jobsite available to the Customer and Users via the internet and where routine maintenance requires the interruption or suspension of the System, to restore access to the Jobsite as soon as practicable;
  - 4.1.2. ensure that the servers have adequate capacity and bandwidth to support the usage of the Customer and Users at a level in accordance with generally accepted standards of availability for similar services operating via the internet;
  - 4.1.3. ensure that the System will materially perform in accordance with any e4s customer guide that is made available to the Customer;
  - 4.1.4. supply a telephone helpdesk Monday to Friday, 9 am to 5.30pm, UK time, excluding UK Bank Holidays, and shall respond to support queries submitted by the Customer by telephone, e-mail, letter and fax within those hours; and
  - 4.1.5. on receipt of written notice relating to a malfunction (made by the Customer under paragraph 4.2.6), investigate any such reported malfunction, and if necessary, rectify and correct any such malfunction as soon as practicable.
- 4.2 The Customer is responsible for all privacy policies and terms of use in relation to the Jobsite.
- 4.3 The Customer is responsible for the look and feel of the Jobsite and all written and graphic content of the Jobsite. The Customer shall provide written approval or sign off as required by e4s prior to the Jobsite going live.

### **5. ADDITIONAL INDEMNITIES AND LIABILITY**

- 5.1 The Customer acknowledges that e4s cannot guarantee or be held liable in respect of either the level of response or the quality of any individuals responding on the Jobsite. It is the Customer's responsibility to carry out such checks and procedures as is necessary to ensure that Users are suitable for the job advertised and have the required qualifications and personal characteristics. e4s expressly does not warrant that any result or objective shall be achieved, be achievable or be attained at all or by a given date under this Agreement.

### **6. ADDITIONAL INTELLECTUAL PROPERTY AND DATA MATTERS**

- 6.1. The Customer agrees that e4s may use the Customer's name, trade marks, and logos in order to provide the Jobsite and for marketing purposes.
- 6.2. The Customer shall indemnify e4s fully against all liabilities, costs and expenses which e4s may incur as a result of work done in accordance with the Customer's specifications.
- 6.3. The Customer shall retain ownership of all Intellectual Property Rights in any content provided by it in relation to the Jobsite, including all design elements.

- 6.4. The Customer acknowledges that any and all Intellectual Property Rights subsisting or used in connection with developing and maintaining the Jobsite, including materials, software and information produced by e4s, are and shall remain the sole and absolute property of e4s. The Customer shall not during or at any time after expiry or termination of this Agreement in any way question or dispute the ownership of e4s thereof. In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of e4s.
- 6.5 The Customer acknowledges and agrees that the servers hosting the software may or may not be located in a territory outside of the EEA and that any technical processing and transmission of data, including customer and personal data may involve (a) transmissions to various networks around the world; and (b) changed to conform and adapt to technical requirements of connecting networks or devices.