

SAMPLE AGENCY AGREEMENT CLAUSES TO MITIGATE RECRUITMENT-RELATED RISK:

A PRACTICAL RESOURCE FOR EMPLOYERS

Employers of foreign migrant workers are increasingly using contract clauses, in part, to ensure their third-party recruitment agents adhere to commitments to ethical recruitment and to underpin the effective implementation of an Employer Pays¹ recruitment policy.

This document presents sample clauses extracted from actual sending-country agency agreements reviewed by Verité during CUMULUS screenings, audits, consulting, research and other engagements in the supply chains of leading multinational companies. The sample clauses presented here represent a current, practical standard for suppliers and employers using commercial agreements to mitigate recruitment-related forced labor risks in the supply chain. Employers can adapt these sample clauses to supplement and strengthen their own agency agreements. Some are composites based on similar clauses in agreements that span sectors and migration corridors. Others have been translated and edited for clarity. The clauses presented here do not represent an exhaustive list and each clause is only effective if incorporated into legally enforceable agreements.

While every effort has been made to ensure the accuracy and reliability of information presented below, Verité makes no representations about their enforceability in specific jurisdictions. The inclusion of these sample clauses does not constitute legal advice, nor are they intended to replace formal consultation with a legal professional.

I. PERFORMANCE CLAUSES²

- 1. AGENT** agrees to provide **COMPANY** with recruitment-related services which include, without limitation, the following:
 - a.** Recommending the most effective advertising media to attract suitably qualified candidates for each recruitment drive, and following **COMPANY** approval, placing of advertisements.
 - b.** Recruitment of a sufficient number of suitably qualified candidates to meet **COMPANY's** demand using multiple sources including, but not limited to, advertisements and job postings, **AGENT's** existing database, website, social media, referrals, and recruiting events.

¹ Employer Pays means the employer pays all recruitment fees and related costs, as defined by the ILO [https://www.ilo.org/global/topics/labour-migration/publications/WCMS_536755/lang--en/index.htm], and that workers are not charged fees or costs at any point during the recruitment process.

² Agency obligations, representations, and warranties are often included in this section.

- c. Receiving, storing, and reviewing candidate materials including completed application forms, CVs, passport details, and relevant qualifications or certificates.
- d. Screening applicants against the job description and candidate specification including by conducting initial interviews, trade tests, reference checks, and verifying qualifications or credentials.
- e. Present **COMPANY** with candidate summaries and a recommended shortlist of fully vetted suitably qualified candidates for final interview.
- f. Arrange, coordinate, and support **COMPANY** interviews of final candidates including providing all necessary facilities to **COMPANY**.
- g. Presenting **COMPANY** selected candidates with a written employment contract, in the local language, duly signed by an authorized representative of **COMPANY** and answering candidate questions.
- h. Facilitating pre-employment medical examinations and vaccinations, required government clearances, pre-departure orientation, and visa processing for selected candidates that accept **COMPANY's** offer of employment.
- i. Make travel arrangements for selected candidates that have successfully completed pre-departure processing.

II. PAYMENT CLAUSES

1. **AGENT** shall invoice **COMPANY** for recruitment/placement/introduction fees in accordance with the following schedule:

20%	Upon signed contract of employment or acquisition of calling visa
30%	Day of departure
50%	Upon workers arrival at COMPANY workplace

- a. **COMPANY** shall be entitled to withhold 50% of the agreed recruitment/placement/introduction fees where there is a reasonable suspicion that workers have been charged recruitment fees or related costs contrary to the terms of this agreement. The balance will only be released when **AGENT** has reimbursed workers or a thorough investigation uncovers no evidence that workers were charged.
 - b. Approved fee invoices will be paid by **COMPANY** within 30 days of receipt and acceptance.
2. **COMPANY** shall reimburse **AGENT** for all agreed and approved direct recruitment costs paid by **AGENT** on **COMPANY's** behalf.
 - a. **AGENT** invoices for reimbursement of direct costs shall include proof of payment to third parties.
 - b. Approved direct cost invoices will be paid by **COMPANY** within 30 days of receipt and acceptance.

III. RIGHT TO WITHHOLD AGENCY PAYMENT CLAUSES

1. **COMPANY** may withhold payments to **AGENT** when:
 - a. **AGENT** has failed to perform, in whole or in part, any of its obligations under this agreement; and/or
 - b. **COMPANY** has reason to believe that workers have been charged recruitment fees and related costs by **AGENT**, or its subagents or service providers, during the recruitment process contrary to the terms of this agreement.
2. If **COMPANY** has reason to believe that specific workers have been charged recruitment fees and related costs in breach of this agreement, **COMPANY** may only withhold the proportionate amount of the invoice related to those workers for the period after the violation occurred and until it is cured or remedied by **AGENT**.
3. If **COMPANY** determines that cause exists to withhold payment to **AGENT**, **COMPANY** shall, within fifteen (15) days of this determination, provide **AGENT** with written notice that **COMPANY** is withholding payment. The notice shall describe the reasons for the withholding and the amount to be withheld. **AGENT** will have thirty (30) days from the date of receipt of such notice to take all necessary and appropriate action to correct the breach, otherwise payment will be denied.
4. In the event **AGENT** fails to correct the breach, **COMPANY** shall be further entitled to withhold the equivalent of USD _____ per worker as liquidated damages.³ The parties agree that if **AGENT** fails to provide remedy to workers, based on available data from credible third-party sources, this is a reasonable, good faith estimate of the amount of recruitment fees and costs that **COMPANY** will need to reimburse workers that have been charged contrary to the terms of this agreement. **AGENT** and **COMPANY** agree that the estimated liquidated damages are not a penalty.
5. **AGENT** understands and acknowledges that if workers are charged recruitment fees and related costs by **AGENT**, or its subagents or service providers, during the recruitment process it will cause serious and irreparable damage to **COMPANY**, the amount of these damages being difficult to estimate and prove, which is why **AGENT** accepts that in the event of a breach of this obligation in the agreement it shall pay damages⁴ to **COMPANY** in the amount of USD _____.

³ This is a liquidated damages clause.

⁴ This is a penalty clause. Penalty clauses may not be enforceable in common law jurisdictions.

IV. AGENCY WARRANTIES AND REPRESENTATIONS CLAUSES⁵

1. **AGENT** acknowledges, represents, and warrants that it will provide the services to **COMPANY** and fully discharge its responsibilities under this agreement and that its compensation shall consist exclusively of the recruitment fees and related costs payable by **COMPANY**.
2. **AGENT** acknowledges, represents, and warrants that it will not, under any circumstances at any time, solicit, levy, collect – directly or indirectly – any recruitment fees or related costs from any candidate applying for a position with **COMPANY**.
3. **AGENT** acknowledges, represents, and warrants that it shall be liable if any employee, subagent, intermediary, or service provider of **AGENT** solicits, levies, or collects any recruitment fees or related costs from any candidate applying for a position with **COMPANY** at any time during the recruitment process or thereafter.
4. **AGENT** acknowledges, represents, and warrants that if candidates applying for a position with **COMPANY** are directly or indirectly charged recruitment fees and related costs at any time during the recruitment process or thereafter, **AGENT** shall be responsible for fully reimbursing applicants and workers.
5. **AGENT** acknowledges, represents, and warrants that if candidates for a position with **COMPANY** are charged recruitment fees and related costs in breach of this agreement, and **AGENT** fails to cure the breach within ___ calendar days, **COMPANY** shall be entitled to withhold payments due to **AGENT** in respect of the services. **COMPANY** shall be further entitled to setoff and deduct from any amounts owed to **AGENT** pursuant to this Agreement all damages and expenses incurred due to **AGENT's** breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction. These rights shall be cumulative and may be exercised successively or concurrently, in addition to any other available remedies.

V. AGENCY GUARANTEE CLAUSES

1. In the event the employment of a candidate recruited under this agreement lasts less than ___ calendar days, except in the case of redundancy or reduction in force, where all recruitment fees and related costs have been paid or reimbursed by **COMPANY**, and **COMPANY** notifies **AGENT** in writing of the termination within ___ calendar days, **AGENT** will provide a suitably qualified replacement candidate for the same position at no additional charge to **COMPANY**.

⁵ These are sometimes included in agency responsibilities or performance clauses.

2. In the event **AGENT** fails to provide a suitably qualified replacement candidate acceptable within ____ calendar days of written notification of termination, **COMPANY** shall be entitled to a full refund of the recruitment/placement/introduction fee.