

## THE EDUCATION NETWORK TERMS AND CONDITIONS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR CONTRACT STAFF TO BE DIRECTLY EMPLOYED BY THE CLIENT

### 1. DEFINITIONS

1.1. In these Terms and Conditions of Business the following definitions apply:

**"Agency"** means the employment agency T.E.N ( The Education Network – Employment Services) Ltd (COMPANY REGISTRATION NUMBER 03178495 registered office St James Business Centre, Wilderspool Causeway, Warrington WA4 6PS ;

**"Candidate"** means the person introduced by the Agency to the Client for an Engagement including any officer or employee of the Candidate if the Candidate is a limited company and a member of the Agency's own staff;

**"Contract"** means these Terms and Conditions of Business between the Agency and the Client;

**"Client"** means the person; firm or corporate body together with any subsidiary or associated Company as defined by the Companies Act 2006 to which the Candidate is introduced;

**"Client Associated Company"** means, any holding company or undertaking of the Client and any subsidiaries and subsidiary undertakings of the Client or such holding company or undertaking, where a "subsidiary", "subsidiary undertaking" and "holding company" have the meanings ascribed to them by the Companies Act 2006

**"Engagement"** means the engagement, employment or use of the Candidate by the Client or any third party on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; directly or through a limited company of which the Candidate is an officer or employee;

**"Introduction"** means (i) the Client's interview of a Candidate in person or by telephone, following the Client's instruction to the Agency to search for a Candidate; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Candidate; and which leads to an Engagement of that Candidate;

**"Remuneration"** includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car 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. Where the Client provides a company car, a notional amount of £5000 will be added to the salary in order to calculate the Agency's fee.

1.2. Unless the context requires otherwise, references to the singular include the plural.

1.3 The headings contained in these Terms of Business are for convenience only and do not affect their interpretation.

### 2. THE CONTRACT

2.1. These Terms and Conditions of Business constitute the contract between the Agency and the Client ("the Contract") and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of a Candidate or the

passing of any information about the Candidate to any third party following an Introduction.

2.2 These Terms and Conditions of Business contain the entire agreement between the parties and unless otherwise agreed in writing by a Managing Director of the Agency, these Terms and Conditions of Business prevail over any other terms of business or purchase conditions put forward by the Client.

2.3 Any variation of these Terms and Conditions of Business in respect of fees and refunds must be previously agreed between a Manager of the Agency and the Client and set out in writing and a copy of the varied terms given to the Client stating the date on or after which such varied terms shall apply.

### 3. NOTIFICATION AND FEES

3.1 The Client agrees:

a) To notify the Agency immediately of any offer of an Engagement which it makes to the Candidate;

b) To notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details of the Remuneration to the Agency; and

c) To pay the Agency's fee within 28 days of the date of invoice.

3.2 Except in the circumstances set out in clause 5.1 below, no fee is incurred by the Client until the Candidate accepts the offer of the Engagement whether such an offer shall be conditional or not when the Agency will render an invoice to the Client for its fees.

3.3 The Agency reserves the right to charge interest on invoiced amounts unpaid for more than 28 days at the rate of 4% per annum above the base rate of the Bank of Scotland at the time being in force on any such invoice amounts calculated on a daily basis.

3.4 The fee payable by the Client to the Agency for the Introduction of a Candidate who subsequently accepts an appointment is 20% of the appointed Candidates' annual Remuneration. The fee is still payable if the Candidate is appointed in a position other than the one originally intended. All fees are subject to VAT.

Alternative fees apply to the Greater London area.

3.5 If the Client subsequently engages or re-engages the Candidate within the period of 6 calendar months from the date of termination of the Engagement or withdrawal of the offer, a full fee calculated in accordance with clause 3.4 above becomes payable.

3.6 If any of the following Clients or Persons uses, engages or employs a Candidate registered with or used by the Agency or who has been registered with or used by the Agency within 6 months of being introduced to such a Client or Persons then the introduction fee of the Agency as per the current scale of rates and charges will be payable by the Client as if the Client was that said following person and that the said following person had contracted with the Agency on these Terms and Conditions of Business:-

- (a) A Client or any servant or agent or employee of the Client; or
- (b) any associate or subsidiary of the Client or any servant or agent or employee of such associate or subsidiary; or
- (c) any other person to whom any of the parties referred to in Clauses 3.7(a) or 3.7(b) above introduced that Candidate. Without prejudice to the generality thereof, an introduction shall be deemed to have been effected if that Candidate carries out any work at the premises of, or for the benefit of any persons referred to in the said Clauses whether in the employment of those persons or not.
- (d) The introduction fee shall also be payable if the Client or Person shall enter into any contract for the supply of the Candidate's services with any company or legal entity with which the Candidate is connected or associated with and/or which company or legal entity invoices that Client for the Candidate's services.

- 3.7 If the Client fails to pay any invoices by the due date the Agency reserve the right to terminate the agreement and upon such termination all unpaid invoices which have not as yet become due for payment shall immediately become payable in full.
- 3.8 The Agency understand and will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if the Agency is not paid in accordance with the agreed payment terms.

#### 4. REFUNDS

- 4.1. In order to qualify for the following refund, the Client must pay the Agency's fee within 28 days of the date of invoice and must notify the Agency in writing of the termination of the Engagement within 7 days of its termination.
- 4.2. Should a successful Candidate leave the employment of the Client within 14 days of his/her commencement of employment for any reason (except where the Candidate is made redundant), the fee chargeable by the Agency will be refunded in full, if already paid, provided written notice of such termination of employment of the Candidate is given to the Agency by the Client within 7 days of the termination. If the Candidate leaves the employment of a Client between 14 days and 8 weeks after the commencement of his/her employment, an introduction fee of 50% of the full introduction fee is payable by the Client. This clause shall only apply where written notification from a Client is received by the Agency within 14 days of the Candidate's last day of employment with the Client.
- 4.3. In circumstances where clause 3.6 and/or 3.7 apply the full fee stated in clause 3.4 is payable and there shall be no entitlement to a refund.
- 4.4. The provisions of clauses 4.1 and 4.2 shall not apply when a successful Candidate is made redundant.

#### 5. CANCELLATION FEE

- 5.1 If, after an offer of Engagement has been made to the Candidate, the Client decides for any reason to withdraw it, the Client shall be liable to pay the Agency a minimum fee of 5% of the annual Remuneration.

#### 6. INTRODUCTIONS

- 6.1. Introductions of Candidates are confidential. The disclosure by the Client to a third party of any details regarding a Candidate introduced by the Agency which results in an Engagement with that third party within 6 months of the

Introduction renders the Client liable to payment of the Agency's fee as set out in clause 3.4 with no entitlement to any refund.

- 6.2 An Introduction fee calculated in accordance with clause 3.4 will be charged in relation to any Candidate or employee/consultant of the Agency engaged as a consequence of or resulting from an introduction by or through the Agency, whether direct or indirect, within 6 months from the date of the Agency's introduction.
- 6.3 Where the amount of the actual Remuneration is not known the Agency will charge a fee calculated in accordance with clause 3.4 on the minimum level of remuneration applicable for the position in which the Candidate has been engaged with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally for such positions.

#### 7. SUITABILITY AND REFERENCES

- 7.1 The Agency endeavours to ensure the suitability of any Candidate introduced to the Client by obtaining confirmation of the Candidate's identity; that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and that the Candidate is willing to work in the position which the Client seeks to fill.
- 7.2 At the same time as proposing a Candidate to the Client the Agency shall inform the Client of such matters confirmed and referred to in clause 7.1 as they have obtained confirmation of. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following save where the Candidate is being proposed for a position which is the same as one in which the Candidate had worked within the previous five business days and such information has already been given to the Client.
- 7.3 The Agency endeavours to take all such steps as are reasonably practicable to ensure that the Client and Candidate are aware of any requirements imposed by law or any professional body to enable the Candidate to work in the position which the Client seeks to fill.
- 7.4 The Agency endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Candidate for the Candidate to work in the position which the Client seeks to fill.
- 7.5 Notwithstanding clauses 7.1, 7.2, 7.3 and 7.4 above the Client shall satisfy itself as to the suitability of the Candidate and the Client shall take up any references provided by the Candidate to it or the Agency before engaging such Candidate. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Candidate, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Candidate is engaged to work.
- 7.6 To enable the Agency to comply with its obligations under clauses 7.1, 7.2, 7.3 and 7.4 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Candidate would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation 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;  
and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Candidate to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the Candidate would be entitled to give and receive to terminate the employment with the Client.

## **8. SPECIAL SITUATIONS**

8.1 Where the Candidate is required by law, or any professional body to have any qualifications or authorisations to work in the position which the Client seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Candidate, two references from persons not related to the Candidate who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Candidate is suitable for the position. If the Agency is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

8.2 The Client shall be solely responsible for taking up references (including the confirmation of any professional or academic qualifications) which it shall require and for arranging any medical examination and investigations of the Candidate, the Candidate's background and for obtaining any work or other necessary permits and shall be solely responsible for satisfying itself as to the suitability of any Candidate.

## **9. LIABILITY**

9.1 The Agency shall not be liable under any circumstances 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 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. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence.

## **10. LAW**

10.1 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

## **11. FORCE MAJEURE**

11.1 Except as otherwise provided, neither party shall be obligated to perform hereunder and neither shall be deemed to be in breach if performance is prevented by (i) fire, earthquake, flood, wind, typhoon, water, act of God, riot, civil commotion, or other matter or condition of like nature, or (ii) any law, ordinance, rule, regulation or order of any public, governmental or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

## **12. ASSIGNMENT**

12.1 The Client or Agency shall not without the consent in writing of the other party assign or transfer the Contract or any part, share or interest therein. No instalment or other sum of money due payable under the Contract shall be payable to any other person than the Agency.

## **13. CONFIDENTIAL INFORMATION**

13.1 The Client agrees to treat the Contract as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to the Agency's technology, or other know-how, business plans or finances or any such information relating to a subsidiary, supplier, customer or client of the Agency where the information was received during the period of the Contract and upon termination of the Contract for whatever reason the Client shall deliver up to the Agency all working papers, computer disks and tapes or other material and copies provided to or prepared by the Client pursuant either to the Contract or to any previous obligation owed to the Agency.

## **14. PARTNERSHIP**

14.1 The provisions of the Contract shall not be deemed to constitute a partnership between the parties.

## **15. ECONOMIC AND MONETARY UNION**

15.1 A decision by the United Kingdom to join or not to join the Economic and Monetary Union will not itself cause this Agreement to be terminated or entitle one party unilaterally to vary or terminate it.

## **16. THIRD PARTY RIGHTS**

16.1 No provision in the Contract is intended to or does confer upon any third party any benefit or right enforceable by the third party.

## **17. DISPUTE RESOLUTION**

17.1 Any question or difference which may arise concerning the Terms and Conditions of Business will be dealt with as follows:

(a) The first instance between the Agency Office and the relevant Client;

b) If not resolved, the issue may be escalated to The Recruitment Services Director or the Operations Director and the relevant Client's Senior Representative;

(c) If the issue cannot be resolved at either of the first two levels, the matter will be escalated to the Agency's Managing Director.

## **18. SEVERABILITY**

If any term of the Contract is found to be illegal, invalid or unenforceable under any applicable law, such terms shall, insofar as it is severable from the remaining terms, be deemed omitted from the Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.

## **19. WAIVER**

No failure to exercise, nor delay or omission by any party in exercising any right, power or remedy conferred on it under this Agreement or provided by law shall affect that right or remedy; or operate as a waiver of it nor will any partial exercise by any party of any right or remedy prevent any further exercise of that right or remedy or the exercise of any other right or remedy.