

## TERMS OF BUSINESS FOR SCHOOLS AND OTHER CLIENTS FOR THE INTRODUCTION OF TEMPORARY SUPPLY STAFF VIA AN INTERMEDIARY

Monarch Education Limited, carrying on business as an employment business, hereby provides personnel services on a temporary basis to users of such services ("the Client/School"). Such services ("the Intermediary Services") will be provided by an intermediary company which is introduced to the Client by Monarch and which employs the temporary worker(s) being supplied. The Intermediary Services are provided on the following terms:-

### 1. DEFINITIONS

1.1 In these Terms of Business ("Terms") the following definitions apply:

<b>"Assignment"</b>	means the period during which the Intermediary Services are supplied to the Client.
<b>"AWR Claim"</b>	means any complaint or claim to a tribunal or court made by or on behalf of the Temporary Worker against the Client and/or the Employment Business for any breach of the Agency Workers Regulations 2010.
<b>"Client / School"</b>	means the institution, person, firm or corporate body together with any associated company as defined by the Companies Act 2006 to whom the Intermediary Services are supplied.
<b>"Comparable Employee"</b>	means as defined in Regulation 5(4) of the Agency Workers Regulations 2010.
<b>"Conduct Regulations"</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
<b>"Data Controller"</b>	means (i) "data controller" as defined by the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and (b) "controller" as defined by the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018.
<b>"Data Protection Legislation"</b>	means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation:  a) the Data Protection Act 1998;  b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679;  c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and  d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union.
<b>"Employment Business"</b>	Monarch Education Limited. Head Office: Temple Point, 1 Temple Row, Birmingham, B2 5LG.
<b>"Engages/Engaged/Engagement"</b>	means the engagement, employment or use of the Intermediary's services or the services of the Temporary Worker directly by the Client or any third party to whom they have been introduced by the Client, directly or indirectly, or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services, or an agency, license, franchise or partnership arrangement; or any other engagement.

<b>"Intermediary"</b>	means the person, firm or corporate body Introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes a Temporary Worker).
<b>"Introduces/Introduced/Introduction"</b>	means <ul style="list-style-type: none"><li>i) the Client's interview of an Intermediary or Temporary Worker in person or by telephone, following the Client's instruction to the Employment Business to supply an Intermediary or Temporary Worker;</li><li>ii) the passing to the Client of a curriculum vitae or information which identifies the Intermediary or Temporary Worker; or</li><li>iii) the supply of an Intermediary; and subsequently an Engagement of that Temporary Worker or Intermediary.</li></ul>
<b>"Introduction Fee"</b>	means the fee payable in accordance with clause 6.1 below and Regulation 10 of the Conduct Regulations.
<b>"Personal Data"</b>	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation.
<b>"Personal Data Breach"</b>	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with these Terms or which otherwise relates to any Candidate.
<b>"Process"</b>	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation and "Processed" and "Processing" will be construed accordingly;
<b>"Qualifying Period"</b>	means 12 continuous calendar weeks during the whole or part of which the Temporary Worker is supplied by one or more Temporary Work Agency (as defined in the Agency Workers Regulations 2010) to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in Regulation 7 of the Agency Workers Regulations 2010.
<b>"Relevant Terms and Conditions"</b>	means terms and conditions relating to: <ul style="list-style-type: none"><li>a) pay;</li><li>b) the duration of working time;</li><li>c) night work;</li><li>d) rest periods;</li><li>e) rest breaks; and</li><li>f) annual leave, that are ordinarily included in the contracts of employees or workers (as appropriate)</li></ul> of the Client whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) any such terms and conditions that have become contractual by virtue of custom and practice.
<b>"Remuneration"</b>	includes gross 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 Intermediary for services rendered to or on behalf of the Client or any third party.
<b>"Temporary Worker/Candidate"</b>	means any officer, employee, worker or representative of the Intermediary supplied to provide the Intermediary Services.
<b>"Transfer Fee"</b>	means the fee payable in accordance with clause 5.1 below and Regulation 10 of the Conduct Regulations.

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

## 2. THE CONTRACT

- 2.1 These Terms constitute the contract between the Employment Business and the Client for the supply of the Intermediary Services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about the Temporary Worker or Intermediary to any third party following an Introduction.
- 2.2 Unless otherwise agreed in writing, these Terms shall prevail over any Terms of business provided by the Client.
- 2.3 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right of remedy of a third party which exists or is available apart from that Act.
- 2.4 The Employment Business acknowledges that if the Client is in the public sector it will be subject to the Freedom of Information Act 2000 ("the Act"). Where the Act applies each party to these Terms shall transfer any request for information related to the Employment Business, to these Terms or to any services provided by the Employment Business received under that Act to the other within two working days after receipt. Notwithstanding the right of the Client, in its sole discretion, to decide how to respond to such a request, it shall take the Employment Business's views into account to the extent that such a request relates to information about the Employment Business or these Terms. The Client shall also notify the Employment Business as soon as practicable where any response to such a request is referred to the Information Commissioner.
- 2.5 The Client acknowledges that the Intermediary and the Temporary Worker carrying out the Assignment have not opted out of the Conduct Regulations and that all of the Conduct Regulations apply to these Terms.

## 3. CHARGES

- 3.1 The Client agrees to pay the daily charge/hourly rate plus VAT, advised by the Employment Business at the time of an Assignment. Verification (through Online Portal or by signature on paper timesheet) of the Employment Business' time sheet each week constitutes acceptance that the Intermediary Services have been provided and the Temporary Worker has worked for the hours/days stated.
- 3.2 The Client shall action the time sheet workflow by midday on the Monday following the week covered by the timesheet otherwise the workflow will be redirected to the Client's nominated substitute, the Client's substitute shall action the workflow before midday on the Tuesday following the week covered by the timesheet otherwise the timesheet will be auto-approved.
- 3.3 The daily charge to the Client for the Intermediary Services shall be notified by the Employment Business upon a request for services by the Client and confirmed in writing upon the confirmation of an Intermediary for an Assignment.
- 3.4 The daily charge shall be made up of:
- a) remuneration due to the Intermediary (including payment for paid leave), as agreed between the Client and the Employment Business from time to time as being applicable to the role and giving due regard to the Agency Workers Regulations 2010;
  - b) statutory entitlements and on-costs in respect of employer's national insurance, pension auto enrolment and the apprenticeship levy as well as any other employer contributions that may become due in respect of a worker from time-to-time; and
  - c) the Employment Business' service fee for the supply of the Intermediary, which shall be applied as a percentage of the total charge rate, on top of the cost of engagement (remuneration plus statutory costs).
- 3.5 Travelling or other expenses agreed between the Employment Business and the Client in respect of the Intermediary Services shall be itemised on the Employment Business' invoice and charged, plus VAT, to the Client in addition to the agreed daily charge for the relevant period.
- 3.6 All charges will be invoiced to the Client weekly and are payable immediately directly to the Employment Business.
- 3.7 The Employment Business is responsible for paying the Intermediary.
- 3.8 Details of charges are available on application. The Employment Business reserves the right to vary the charges payable by the Client, including but not limited to in a situation where the Relevant Terms and Conditions change (for example where the pay of comparable employees increases) such changes to be notified to the Employment Business under the terms of clause 20.2 d) of these Terms.

#### 4. RESPONSIBILITY FOR INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 4.1 The Employment Business and the Client acknowledge that the Intermediary shall be responsible for the payment of any Temporary Worker's remuneration, following receipt from the Employment Business, and shall deduct there from and account for all applicable taxes (including without limitation any National Insurance contributions) required by law.

#### 5. TRANSFER FEES

- 5.1 In the event of the Engagement by the Client of the Intermediary or a Temporary Worker supplied by the Employment Business for an Assignment either (1) directly or (2) pursuant to being supplied by another employment business, during the Assignment or within whichever is the longer of either:

- a) 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
- b) 8 weeks from the day after the last day the Temporary Worker provided the Intermediary Services on behalf of the Intermediary on the Assignment;

the Client shall be liable, subject to electing by giving 7 days prior notice, to either:

(c) An extended period of hire of the Temporary Worker being 52 weeks during which the Client shall pay the current daily/hourly charge as pre-agreed for each day/hour the Temporary Worker is so employed or supplied. After this period, during which these Terms shall continue to apply, the Transfer Fee shall not be payable on the expiry of the extended period of hire; or

d) A Transfer Fee calculated as follows: A minimum of 20% of the Gross Remuneration applicable during the first 12 months of the Engagement. Or where this calculation falls below £3000 for a teacher or £1500 for other workers these minimum fees will apply.

e) Or, if the actual amount of the Gross Remuneration is not known, the Transfer Fee will be forty times the daily charge rate at which the Temporary Worker was last supplied to carry out the Intermediary Services. VAT is payable in addition to any fee due. Where the Client does not give notice of its election as set out above before the Temporary Worker is engaged the parties agree that the Transfer Fee shall be due.

- 5.2 If the Client elects for an extended period of hire, as set out above, but before the end of such period Engages the Temporary Worker supplied by the Employment Business either directly or pursuant to being supplied by another business or the Temporary Worker chooses not to be supplied for an extended period of hire, the fee calculated in accordance with either 5.1 or 6.1 may be charged, reduced by such percentage to reflect the period of extended hire already undertaken by the Temporary Worker and paid for by the Client

#### 6. INTRODUCTION FEES

- 6.1 In the event that there is an Introduction of the Intermediary or a Temporary Worker to the Client which does not result in the supply of that Intermediary or Temporary Worker by the Employment Business to the Client, but which leads to an Engagement of the Intermediary or Temporary Worker by the Client either directly or pursuant to being supplied by another employment business within 6 months from the date of Introduction, the Client shall be liable, subject to electing upon giving 7 days notice, to either:

- 6.2
- a) A period of hire of the Temporary Worker being 20 weeks during which the Client shall pay the current daily/hourly charge as pre agreed pursuant to clause 3.1 (above) for each day/hour the Temporary Worker is so employed or supplied; or
  - b) An Introduction Fee calculated as follows: A minimum of 20% of the Gross Remuneration applicable during the first 12 months of the Engagement. Or, if the actual amount of the Remuneration is not known, the Introduction Fee will be forty times the daily charge rate at which the Temporary Worker would be supplied to carry out Intermediary Services. No refund of the Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.

Where the Client does not give notice of its election as set out above before the Temporary Worker is engaged the parties agree that the Introduction Fee shall be due.

- 6.3 In the event that the Engagement of the Temporary Worker is for a fixed term of less than 12 months, the fee in clause 5.1 or 6.1 will be calculated and applied as a pro-rata percentage of the Remuneration. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Temporary Worker within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner. The minimum fees of £3000 for teachers and £1500 for other staff remains applicable should the pro rata calculation cause the calculation to fall below these amounts.

6.4 Fees may be waived by agreement IN ADVANCE of the Assignment starting on the condition that an agreed period will be completed on weekly timesheets/invoices before the Temporary Worker is employed directly, in accordance with promotions run at various times of the year.

## 7. VAT

7.1 The parties acknowledge that the charges for the Services have been calculated taking into account the recoverability of input VAT wholly or partly attributable to the provision of such Services.

7.2 Where, as a result of any change of law, any new or amended VAT ruling, any new or altered practice or interpretation of HMRC or any court or tribunal decision (which events shall be referred to individually or collectively as a Change of Law), the Employment Business suffers any restriction or reduction in the amount of input VAT wholly or partly attributable to the provision of the Services in respect of which it is entitled to credit or repayment:

a) the amount of the charges for the Services payable by the Client shall, with effect from the date of such Change of Law, be increased so as to ensure that the Employment Business is put in the same financial position as if no such Change of Law had occurred; and

b) any amount payable by the Client to the Employment Business pursuant to (a) shall be paid, in addition to and at the same time as any other consideration for the Services, and without any deduction, set off or withholding.

7.3 Where as a result of any Change of Law, the charges for Services already supplied are deemed, as a result of such change, to have borne an amount in respect of VAT which was not VAT properly due thereon (Overpaid VAT), and the Client requests in writing that the Employment Business seeks a refund from HMRC in respect of such Overpaid VAT then, subject to the Client indemnifying and holding harmless the employment Business for the costs and expenses incurred pursuant to any action taken under this clause 7.3 and subject to clause 7.4:

a) the Employment Business shall take such action as may be necessary to claim a refund of the Overpaid VAT to the fullest amount permitted under UK legislation; and

b) the Employment Business shall remit to the Client a sum equal to the amount actually received from HMRC in respect of such claim, less any costs and expenses incurred in or as a consequence of making such claim (to the extent not previously recovered pursuant to the indemnity above) and less an amount equal to any restriction or reduction (as a result of the Change in Law) in the amount of input VAT wholly or partly attributable to the provision of the Services already supplied in respect of which it is entitled to credit or repayment.

7.4 The Employment Business shall not be required to take any action referred to in clause 7.3(a) which involves engaging in any litigation or dispute with HMRC or any other tax authority or any third party, and shall not be obliged to take or omit to take any action which it, in its sole discretion, believes is or could be contrary to the interests of its business.

7.5 For the avoidance of doubt, save in accordance with clause 7.3, the Employment Business shall have no liability to pay any amount to the Client in respect of any Overpaid VAT.

## 8. SUITABILITY

8.1 The Employment Business endeavours to ensure the suitability of any Intermediary or Temporary Worker introduced to the Client, meeting current Safeguarding Requirements and Pre-Employment Checks as advised by the Department for Education. The Employment Business shall take up any references provided in relation to the Temporary Worker and will make all reasonable enquiries into the Temporary Worker's personal history. Nevertheless, the Client is recommended to take up references independently and to satisfy itself as to the suitability of any Intermediary or Temporary Worker.

## 9. LIABILITY

9.1 Whilst every effort is made by the Employment Business to ensure reasonable standards of skills, integrity and reliability from Intermediaries and Temporary Workers and to provide them in accordance with the Client's booking details, the Employment Business 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 Employment Business introducing to the Client any Intermediary, or from the Engagement of any Temporary Worker or Intermediary by the Client or from the failure of The Employment Business to Introduce any Intermediary or Temporary Workers.

## 10. DISCIPLINE

10.1 The Employment Business accepts that any Intermediary or Temporary Worker should observe all applicable disciplinary rules whilst engaged by the Client. On a serious breach of such rules by a Temporary Worker or Intermediary the Client may terminate an Assignment provided the Client shall first give reasonable notice of such termination to the Employment Business which shall have the right to

replace the Intermediary with another Intermediary or to request that the Intermediary replaces any Temporary Worker with another individual who in any case is reasonably acceptable to the Client.

## 11. HEALTH AND SAFETY

- 11.1 The Client shall take all reasonable precautions to ensure the health and safety of all Temporary Workers engaged to carry out the Intermediary Services while on the Clients' or any other premises.
- 11.2 The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker.

## 12. CANCELLATION

- 12.1 The Client undertakes to supervise the Intermediary and all Temporary Workers in carrying out the Intermediary Services to ensure the Client's satisfaction with the standard of the Intermediary Services and to ensure compliance with reasonable standards of professional competence. If the Client reasonably considers that the Intermediary Services are unsatisfactory, the Client may terminate the Assignment either by instructing the Intermediary Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove them. The Employment Business may, in its absolute discretion, in such circumstances, consider a reduction or cancellation of the daily charge, provided notification is received from the Client that they have asked the Intermediary/ Temporary Worker to leave the Assignment or the Assignment terminates either within four hours of the commencement of the Assignment or, where the Assignment is for one day or less, within two hours of the commencement of the Assignment. In either case, notification of the unsuitability of the Intermediary/Temporary Worker must be confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 12.2 As an alternative to any reduction or waiver of the daily charge as set out at clause 12.1, the Employment Business shall have the right to replace the Intermediary with another Intermediary or to request that the Intermediary replaces any Temporary Worker with another individual who in any case is reasonably acceptable to the Client.

## 13. RESPONSIBILITY

- 13.1 The Intermediary supplied by the Employment Business to the Client is engaged on a contract for services and the Temporary Worker supplied by the Intermediary is deemed to be under the supervision, direction and control of the Client for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker whether wilful, negligent or otherwise.
- 13.2 The Client will comply in all respects with all relevant legal requirements including, but not limited to, the Working Time Regulations 1998 ("WTR"), The Agency Workers Regulations 2010 ("AWR") and the Conduct Regulations.
- 13.3 The Client undertakes not to request the supply of an Intermediary to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 13.4 The Client will be responsible for the provision of adequate Employer's and Public Liability Insurance cover in respect of the Intermediary and all Temporary Workers during all Assignments. The Client shall also advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Intermediary and/or the Temporary Worker.
- 13.5 The Client will assist the Employment Business in complying with the Employment Business' duties under the WTR and the AWR by supplying any relevant information about the Assignment requested by the Employment Business, and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. In respect of the WTR, where the Client requires or may require the services of a single Temporary Worker being supplied by an Intermediary to carry out the Intermediary Services for more than forty-eight hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week to ensure compliance with the legislation.
- 13.6 In respect of a Temporary Worker supplied by an Intermediary who is pregnant, has recently given birth or is breastfeeding, where, for health and safety reasons, there may be a risk to the Temporary Worker, the Client shall before ending an Assignment:
- a) take all reasonably practicable steps to make any reasonable adjustments or modifications to remove or reduce the risk to acceptable levels;
  - b) consider whether there are any other suitable roles within the Client's organisation for which the Temporary Worker can be supplied by the Employment Business and advise the Employment Business accordingly; and
  - c) not to discriminate against the Temporary Worker.

13.7 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Intermediary for the Intermediary to fill the Assignment.

#### 14. DATA PROTECTION AND CONFIDENTIALITY

14.1 For the purposes of this clause 14 "Data Subject" has the meaning given, and will be interpreted in accordance with, the Data Protection Legislation. For the avoidance of doubt, references to Data Subjects include Candidates/Temporary Workers.

14.2 The parties acknowledge that the Employment Business is a Data Controller in respect of the Personal Data of Candidates/Temporary Workers and provides such Personal Data to the Client in accordance with the Data Protection Legislation for the purposes anticipated by these terms.

14.3 The parties further acknowledge that the Client is also a Data Controller but the parties hereto are not Joint Controllers (as defined within the Data Protection Legislation) save where a specific agreement is made to that effect between the parties.

14.4 The parties agree that a Temporary Worker is not a Data Processor (as defined within Data Protection Legislation) when working on behalf of the Client; save where agreed otherwise within a schedule of assignment and subject to additional terms and conditions confirming the same.

14.5 The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by the Client, the Employment Business or by a Candidate/Temporary Worker, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation.

14.6 The parties will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.

14.7 The Client will –

a) comply with the instruction of the Employment Business as regards the transfer/sharing of data between the parties. If the Client requires Personal Data not already in its control to be provided by the Employment Business, the Client will set out its legal basis for the request of such data and accept that the Employment Business may refuse to share/transfer such Personal Data where, in the reasonable opinion of the Employment Business, it does not comply with its obligations in accordance with the Data Protection Legislation;

b) ensure it has met any obligations under the Data Protection Legislation to keep a record of its Processing activities in respect of Candidates/Temporary Workers;

c) not cause the Employment Business to breach any of its obligations under the Data Protection Legislation.

14.8 In the event the Client becomes aware of an actual or any reasonably suspected Personal Data Breach, it will immediately notify the Employment Business and will provide the Employment Business with a description of the Personal Data Breach, the categories of data that was the subject of the Personal Data Breach and the identity of each Data Subject affected and any other information the Employment Business reasonably requests relating to the Personal Data Breach.

14.9 In the event of a Personal Data Breach, Client will promptly (at its own expense) provide such information, assistance and cooperation and do such things as the Employment Business may request to –

a) investigate and defend any claim or regulatory investigation;

b) mitigate, remedy and/or rectify such breach; and

c) prevent future breaches; and will provide the Employment Business with details in writing of all such steps taken.

14.10 The Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of the Employment Business, unless it is obliged to give such notice under the Data Protection Legislation.

14.11 The Client agrees it will only Process Personal Data of Candidates/Temporary Workers for the agreed purpose of considering Candidates for Engagement or for the management, supervision, direction and control of Temporary Workers.

14.12 The Client will provide evidence of compliance with clause 14 upon request from the Employment Business.

14.13 Save for any information already in the public domain or any information which subsequently comes into the public domain other than by a breach of this clause, neither the Employment Business nor the Client shall use or disclose any information (including without limitation any trade secrets, business or commercially sensitive information) obtained from the other except as necessary for the

performance of these Terms. Employment business undertakes to keep confidential all secret or confidential information relating to the business of the Client, its employees, transactions or finances disclosed to the Employment Business shall be regarded as having been disclosed in confidence and shall not, otherwise than in connection with the affairs of the Client or for the purposes of compliance with the Employment Business' obligations for example under the AWR, be passed on to a third party or in any way be made use of by the Employment Business at any time either during or after the termination of this Agreement.

- 14.14 The Employment Business procures that upon termination of or at any time during an assignment, a Temporary Worker shall deliver to the client all books, documents, papers, materials and other property (including any copies thereof) belonging to or relating to the business of the Client which may then be in his/her possession or under his/her control.

## 15. INDEMNITY

- 15.1 The Client shall at all times keep The Employment Business fully indemnified against any costs, claims (including, but not limited to, any claims arising from any potential, actual or deemed employment), expenses, loss, liabilities and damages incurred by The Employment Business in respect of matters arising out of any Assignment and/or this agreement by virtue of the Client's direction and control of the Temporary Worker or arising out of any breach of this agreement or negligent act or omission of the Client.
- 15.2 The Employment Business shall not be liable to the Client for any loss, liability, damages, costs, claims or expenses suffered or incurred by the Client howsoever arising as a result of the negligence, dishonesty or misconduct of the Temporary Worker or arising from, or connected with, the Engagement of the Temporary Worker under this agreement. The Employment Business does not exclude or limit liability for death or personal injury.
- 15.3 Notwithstanding anything else in this agreement, the liability of each party to the other under or in connection with this agreement flowing from one event or a series of connected events, whether arising under contract or by way of indemnity, negligence or otherwise, shall be limited to an aggregate liability of 150% of the charges paid or payable in the calendar year in which the event giving rise to the breach of this Agreement occurred.
- 15.4 Subject to the express provisions of this agreement, neither party shall be liable to the other for any indirect or consequential loss, loss of profit, business or anticipated savings.

## 16. VARIATION

- 16.1 No variation to these Terms can be made otherwise than as agreed in writing between the Employment Business and the Client and signed by a Director of the Employment Business.

## 17. GOVERNING LAW

- 17.1 This Agreement shall be governed by and construed in accordance with the laws of England & Wales and parties hereby submit to the non-exclusive jurisdiction of the Courts of England & Wales.

## 18. OVERDUE DEBTS

- 18.1 If the Client fails to make any payment due to the Employment Business under this Agreement by the due date for payment, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

## 19. WAIVER

- 19.1 The failure by the Employment Business to enforce at any particular time any one or more of the terms of these Terms shall not be deemed a waiver of such rights or of the right to subsequently enforce these Terms.

## 20. VALIDITY

- 20.1 If any provision, clause or part-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by a judicial body, the remaining provisions of these Terms shall remain in full force and effect to the extent permitted by law.

## 21. AGENCY WORKERS REGULATIONS 2010 ("AWR")

- 21.1 The Client will comply with its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment) of the AWR.
- 21.2 To enable the Employment Business to comply with its obligations under the AWR, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request:



- a) to inform the Employment Business of any calendar weeks since 1 October 2011 in which the relevant Temporary Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- b) if, since 1 October 2011, the Temporary Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
- c) to inform the Employment Business if, since 1 October 2011, the Temporary Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
  - a) completed two or more assignments with the Client;
  - b) completed at least one assignment with the Client and one or more earlier assignments with any group company of the Client; and/or
  - c) worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;
- d) save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to:
  - a) provide the Employment Business with written details of the basic working and employment conditions the Temporary Worker would be entitled to for doing the same job if the Temporary Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
  - b) inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
  - c) if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
  - d) inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- e) save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- f) save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of the Planning, Preparation and Assessment Time which is provided to directly engaged teachers.

- 21.3 The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR. The Client and the Employment Business agree that in the event of any breach of the AWR which is caused by the provision of incorrect information from the Client to the Employment Business the Client will be liable for any such breach and shall indemnify and keep indemnified the Employment Business against any losses, costs, claims or liabilities incurred by the Employment Business arising out of such a breach.
- 21.4 The Client warrants that:
- a) all information and documentation supplied to the Employment Business in accordance with clauses 21.1, 21.2 and 21.3 is complete, accurate and up-to-date; and
  - b) it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 21.1, 21.2, 21.3.
- 21.5 Without prejudice to clauses 21.7 and 21.8, the Client shall inform the Employment Business in writing of any:
- a) oral or written complaint the Temporary Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and

(b) written request for information relating to the Relevant Terms and Conditions that the Client receives from the Temporary Worker;

as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Temporary Worker within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the AWR and the Client will provide the Employment Business with a copy of any such written statement.

- 21.6 The Client shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- 21.7 If the Temporary Worker brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and to give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.
- 21.8 The Client shall refrain from subjecting any Temporary Worker to any detriment having regard to Regulation 17 of AWR.

## **22. Termination**

- 22.1 The Client, the Employment Business, the Intermediary or the Temporary Worker, may terminate an Assignment at any time without prior notice or liability. Save in respect of those Temporary Workers who may be subject to a notice period of which the Client will receive notification from the Employment Business in which case an equivalent notice period shall be required from the Client. In the event of termination, all outstanding or accrued fees due to the Employment Business by the Client remain due and payable.
- 22.2 The Client or the Employment Business may terminate this Agreement on 4 weeks written notice to each other.