

# Engage Education Client Terms of Business for the placement of permanent employees

## THE PARTIES

- (1) Engage Education Limited (registered company no 08133749) of 4th Floor, 45 Clarendon Road, Watford, WD17 1SZ ("the Employment Business").
- (2) ("The Client") to whom the Candidate is supplied or Introduced. For the avoidance of doubt, the Client shall also include any School, Educational Establishment, LEA, subsidiary or associated person, firm or corporate body (as the case may be) to whom the Candidate is supplied or introduced.

## 1. DEFINITIONS

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

"Cancellation Fee"	means the fee payable by the Client to the Employment Agency when the Client withdraws an offer of Engagement made to the Candidate and which is calculated in accordance with Clause 3.10;
"Candidate"	means the person Introduced by the Employment Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Employment Agency's own staff;
"Client"	means the School, Education Establishment, LEA, person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is Introduced;
"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 Employment Agency, licence, franchise or partnership agreement, or any other engagement, or through a limited company of which the Candidate is an officer, employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly;
"Introduction"	means (i) the passing to the Client of a curriculum vitæ or information which identifies the Candidate or (ii) the Client's interview of a Candidate (in person, by telephone or by any other means), following the Client's instruction to the Employment Agency to search for a Candidate; and in either case which leads to an Engagement of that Applicant; and "Introduces" and "Introduced" shall be construed accordingly;
"Introduction Fee"	means the fee payable by the Client to the Employment Agency when the Candidate accepts an offer of Engagement following an Introduction by the Employment Agency;
"Remuneration"	includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, 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 or any third party.
"Replacement Candidate"	means any Candidate Introduced by the Employment Agency to the Client to fill the Engagement following the Introduction of another

Candidate whose Engagement either did not commence or was terminated during the first 6 weeks of the Engagement.

- 1.2. Unless the context requires otherwise, references to the singular include the plural, masculine includes the feminine and vice versa.
- 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 and the attached Schedule(s) ("the Schedules") constitute the contract between the Employment Agency and the Client for the supply of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.
- 2.2. These Terms contain the entire agreement between the parties, unless otherwise agreed in writing by a director or representative of the Employment Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director or representative of the Employment Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. The Employment Agency acts as an Employment Agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

## 3. NOTIFICATION AND FEES

- 3.1. The Client agrees to:
  - 3.1.1. notify the Employment Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;
  - 3.1.2. notify the Employment Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Employment Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Employment Agency; and
  - 3.1.3. pay the Introduction Fee to be calculated in accordance with the provisions of this Clause 3.
- 3.2. The Introduction Fee shall be payable within 14 days of the date of the Employment Agency's invoice.
- 3.3. The Introduction Fee is the amount equal to a % of the Remuneration applicable during the first 12 months of the Engagement, as detailed in the Schedule.
- 3.4. Where prior to the commencement of the Engagement the Employment Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the full Introduction Fee will still apply.
- 3.5. If the Client subsequently Engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (b) the

Candidate's rejection of an offer of an Engagement, (whichever is the later), then the full Introduction Fee calculated in accordance with Clause 3.3 above becomes payable.

- 3.6. The Client's obligations under this Clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 3.7. VAT is charged at the standard rate on all fees.
- 3.8. The Employment Agency reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 4% per annum above the base rate from time to time of the HSBC Bank from the due date until the date of payment.
- 3.9. Where the actual Remuneration is not known or the Client has continually failed to provide this information, the Employment Agency will charge an Introduction Fee of £10,000
- 3.10. 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 Employment Agency a Cancellation Fee of £4500.
- 3.11. In the event that any Employment Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Employment Agency or within 6 months of leaving the Employment Agency, the Client shall be liable to pay an Introduction Fee to the Employment Agency calculated in accordance with Clause 3.3.

#### 4. REFUNDS

- 4.1. If, after an offer has been made and accepted, the Engagement (a) does not commence or (b) is terminated before the expiry of 6 weeks (except in circumstances where the Candidate is made redundant) from the date of commencement of the Engagement, then subject to the terms of Clause 4.2 the Employment Agency will refund the Introduction Fee in accordance with the accompanying Scale of Refunds set out in the Schedule attached to these Terms.
- 4.2. In order to qualify for the refund set out in Clause 4.1, then:
  - 4.2.1. further to Clause 3.2 the Client must pay or have paid the Introduction Fee by the due date for payment and must notify the Employment Agency in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement; and
  - 4.2.2. the Client must exclusively give the Employment Agency 8 weeks from the notice of non-commencement or termination to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 8 weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of 6 weeks from the date of commencement of the Engagement the Client will then be eligible for a refund, subject to the rest of Clause 4.
- 4.3. For the purposes of this Clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases to be employed by the Client or the date the Candidate would have ceased working for the Client but for any period of garden leave or payment in lieu of notice.
- 4.4. If subsequent to the Client receiving a refund the Candidate is re-engaged within a period of 6 calendar months from the date of termination, then the full Introduction Fee as calculated in Clause 3.3 becomes due. The Client shall not be entitled to any further refunds in relation to the Engagement of this Candidate.

#### 5. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party that will be deemed to be a "Third Party Introduction". If that Third Party Introduction results in an offer of Engagement to the Candidate by the third party within 6 months of the Employment Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Employment Agency for payment of an Introduction Fee in accordance with Clause 3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under Clause 4 in any circumstances.

## 6. SUITABILITY CHECKS

- 6.1. The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
  - 6.1.1. ensure that it would not be detrimental to the interests of either the Client or the Candidate;
  - 6.1.2. ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
  - 6.1.3. confirm that the Candidate is willing to work in the position;
  - 6.1.4. obtain confirmation of the Candidate's identity; and 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.
- 6.2. Notwithstanding clause 6.1 the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
  - 6.2.1. taking up any references provided by the Candidate before Engaging the Candidate;
  - 6.2.2. checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 6.2.3. the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 6.2.4. satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 6.3. To enable the Agency to comply with its obligations under clause 6.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
  - 6.3.1. the type of work that the Candidate would be required to do;
  - 6.3.2. the location and hours of work;
  - 6.3.3. 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;
  - 6.3.4. any risks to health or safety is known to the Client and what steps the Client has taken to prevent or control such risks;
  - 6.3.5. the date the Client requires the Candidate to commence the Engagement;
  - 6.3.6. the duration or likely duration of the Engagement;

- 6.3.7. the minimum rate of Remuneration, expenses and any other benefits that would be offered;
  - 6.3.8. the intervals of payment of Remuneration; and
  - 6.3.9. the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 6.4. Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 6.1, take reasonably practicable steps to:
- 6.4.1. obtain confirmation of the Candidate's identity;
  - 6.4.2. obtain confirmation 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
  - 6.4.3. obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

## 7. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Candidate is confidential and subject to the Data Protection Act 1998 and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Act 1998 in receiving and processing the data at all times. In addition, information relating to the Employment Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

## 8. LIABILITY

The Employment 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 Employment 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 Employment Agency to introduce any Candidate. For the avoidance of doubt, the Employment Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss that it is not permitted to exclude under law.

## 9. NOTICES

All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by registered post to the working address office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing or by email. Any such notice shall be deemed to have been served: if by hand when delivered, if by registered post, upon signature and if by email, when that email is sent, with transmitting confirmation is received confirming receipt.

## 10. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

## 11. GOVERNING LAW AND JURISDICTION

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

### FEE STRUCTURE

Position	Fee %
Leadership position (L)	27.5%
Middle Leadership positions (UPS/TLR)	25%
Main Pay Scale 1-6 (MPS)	22.5%

### SCALE OF REFUND

- The following scale of refund only applies in the event that the Client complies with the provisions of Clauses 3.1, 4.1 and 4.2 of these Terms.
- Where the Candidate ceases working for the Client during the first 6 weeks of the Engagement (except where the Candidate is or will be made redundant) or fails to commence an Engagement, except in the circumstances set out in Clause 3.11, a refund of the Introduction fee shall be paid to the Client in accordance with the scale set out below, subject to the conditions in Clause 4.1 and 4.2.

Week in which the Engagement terminates in accordance with Clause 4.2	% of introduction fee refunded
Non-commencement (teachers non-start)	100
Non-commencement ( school terminates)	50
First two weeks	75
Over 2 Weeks and up to 6 weeks	25
Over 6 Weeks	nil

- There will be no refund where the Candidate's Engagement is terminated (or the Engagement would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 6<sup>th</sup> week of the Engagement.