

## 1.0 DEFINITIONS

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

**"Authorised Person"** means any individual employed by the **"Client"** who is authorised to confirm days or hours worked and/or fees relating to the **"Introduction"** of **"Temporary Worker"**.

**"Assignment"** means the period during which the Temporary Worker is engaged by the Client through the Employment Business to render services;

**"Assignment Schedule"** means individual confirmation notices issued to the client confirming specific charge rates for each skill of Temporary Worker supplied;

**"Client"** means the school, person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2003 whom the Temporary Worker or Permanent Worker is Engaged by the Client or Introduced by the Employment Business.

**"The Employment Business"** means Now Education Group Limited and its subsidiary companies, whose registered office is at Pinnacle House, 8 Harborne Road, Birmingham, England, B15 3AA.

**"Engages/Engaged/Engagement/Engaging"** means the engagement, Introduction, employment or use by any other means of the Temporary Worker or Permanent Worker directly by the Client or via any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or via a third party.

**"Regulations"** means the Conduct of Employment Agencies and Employment Business Regulations 2003 (SI 2003/3319) (as amended).

**"Relevant Period"** has the meaning given in regulation 10(5) and (6) of the Regulations.

**"Temporary Worker"** means the individual(s) who is introduced by the Employment Business to render services to the Client.

**"Permanent Worker"** means the individual(s) who is introduced by the Employment Business to the Client for the purpose of being hired directly by the Client without a period of on Assignment as a Temporary Worker.

**"Introduction"** means (i) the Client's interview of a Temporary Worker, following the Client's instruction to the Employment Business to supply a Temporary Worker; or (ii) the passing to the Client of a curriculum vitae or other information which identifies the Temporary Worker; whether or not, in either case, the Client had knowledge of such Temporary Worker prior to the Introduction.

**"Total Remuneration"** the first year's equivalent annualised remuneration, including (without limitation) allowances such as TLR, milestone payments, recruitment and retention points to which the Temporary Worker or Permanent Worker may be entitled. Where a placement is part-time the salary will be equated to the full-time equivalent and the Placement Fee shall be levied on that salary.

1.2 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

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

## **2.0 THE CONTRACT**

- 2.1. These Terms constitute the contract between the Employment Business and the Client for the supply of Temporary and Permanent Worker 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 any Temporary or Permanent Worker or the passing of any information about a Temporary or Permanent Worker to any third party following an Introduction. The Employment Business is entitled to assume that any employee or agent of the Client has the Client's authority to bind the Client (unless the Client notifies the Employment Business otherwise in writing) and the Employment Business is not required to seek confirmation of that authority.
- 2.2. These Terms and any assignment schedules issued contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any other terms of business or purchase conditions 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 the Employment Business 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. These Terms are valid from 1<sup>st</sup> September 2023 and supersede and replace all previous terms of business between the Employment Business and the Client.
- 2.5. All Introductions and Temporary Worker details are confidential and are supplied to the Client on the understanding that the Client will keep the information confidential and not disclose it to any third party without the prior written consent of the Employment Business.
- 2.6. The Client automatically agrees to these Terms of Business when Engaging with any Temporary Worker supplied by the Employment Business either on a temporary or permanent basis.

## **3.0 CHARGES FOR ENGAGEMENT ON TEMPORARY BASIS**

- 3.1 The Client agrees to pay such daily and/or hourly charges of the Employment Business as shall be notified to and agreed with the Client on each assignment schedule. The daily and/or hourly charges are calculated according to the number of days and/or hours worked by each Temporary Worker (to the nearest quarter hour) and comprise mainly the Temporary Worker's pay but also include the Employment Business' commission calculated as a percentage of the Temporary Worker's pay, employer's National Insurance contributions and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges.
- 3.2 All charges and fees are exclusive of VAT and are invoiced to the Client on a weekly basis and are payable within 30 days of the date of invoice.
- 3.3 Where there are incorrect charges and fees resulting from errors made by the Client, the Client agrees to a period of 7 working days from the date of invoice to notify the Employment Business of any such errors and request any relevant subsequent credit(s) or adjustment(s). Where the Client does not notify the Employment Business within 7 working days, the Employment Business reserves the right to refuse any credit(s) or adjustment(s) and the Client agrees to pay the original invoice value in full within the payable period of 30 days.
- 3.4 The Employment Business may increase its fees and charges on an annual basis with effect from 1 September each year by 5% or in line with the latest available figure for the percentage increase in the Retail Prices Index in the preceding 12-month period (whichever is lower).

- 3.5 The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 3% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

#### **4.0 INFORMATION TO BE PROVIDED**

- 4.1 The Employment Business will not make any Introduction to the Client until the Client has supplied it with the following information:-
- a) the proposed start date for a Temporary Worker and the likely duration of the work;
  - b) the position the Client is seeking to fill, together with a summary of the type of work the Temporary Worker would be required to do, the location and hours at which the Temporary Worker would be expected to work, details of any potential health and safety risks and any steps the Client has taken to limit such risks including copies of any and all relevant risk assessments undertaken by the Client in respect of the position the Client is seeking to fill;
  - c) details of the experience, training, qualifications and any authorisations required to be possessed by the Temporary Worker (either as required by law or a professional body, or as the Client considers necessary);
  - d) any expenses payable by or to the Temporary Worker;
  - e) the minimum rate of remuneration and benefits to be offered and the intervals at which payment would be made, and the length of notice a Temporary Worker in such a position would be required to give or entitled to receive, on termination of their Engagement;
  - f) written confirmation from the Client, signed by an authorised representative, confirming that the Client is aware of all the legal and/or professional requirements to be satisfied before the Temporary Worker can be supplied or engaged, together with confirmation that the supply by the Employment Business to the Client of Temporary Workers will not be detrimental to the Client's interests; and
  - g) written confirmation from the Employment Business, signed by an authorised representative, confirming that the Client authorises the Employment Business to disclose any and all information provided by the Client under this clause to such of the Employment Business' officers and employees as the Employment Business shall see fit, and authorising the Client and such officers and employees to disclose any of the information to Temporary Workers introduced or supplied by the Employment Business.
- 4.2 When making an Introduction the Employment Business shall inform the Client of the identity of the Temporary Worker; that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Temporary Worker will be employed by the Employment Business under a contract of service or apprenticeship or a contract for services; and that the Temporary Worker is willing to work in the Assignment. Where the Work Seeker is to work with vulnerable adults or young people the Employment business will ensure the Work Seeker is able to work to do so before any and all assignments commence.
- 4.3 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 Temporary Worker is being Introduced for an Assignment in the same position as one in which the Temporary Worker had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

## 5.0 TIMESHEETS

- 5.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Authorised Person shall sign the Employment Business' timesheet, confirm by email from a Client email address or confirm via the Employment Businesses' online portal, verifying the number of days and/or hours worked by the Temporary Worker during that week.
- 5.2 Signature of the timesheet, confirmation by email or confirmation via the online portal by the Authorised Person is confirmation of the number of days and /or hours worked.
- 5.3 The correct deduction of breaks shall be the responsibility of the client. Authorisation of a timesheet without breaks being shown as deducted shall be deemed as full authorisation of all hours on the timesheet. Incorrect analysis of break deductions shall be the responsibility of the Client and any error shall be at their liability and cost.
- 5.4 If the Client is unable to sign a timesheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker.
- 5.5 Failure to sign the timesheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.
- 5.6 The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker.
- 5.7 In cases of unsuitable work the Client should apply the relevant provisions of clause 10 below.
- 5.8 The client accepts that any employee of the Client who signs a timesheet is signing on behalf of the client and that any such signature shall be deemed an authorised signature.
- 5.9 Alternative time recording systems:
  - (a) can only be used if agreed in writing between the Client and the Employment Business.
  - (b) Alternative methods can only be used from the date agreed by both parties in writing.
  - (c) should there be a dispute relating to days and/or hours worked between a signed timesheet and an alternative recording system then the signed timesheet shall at all times take precedence.

## **6.0 PAYMENT OF THE TEMPORARY WORKER**

- 6.1 All Temporary Workers, whether paid directly by the Employment Business or on an outsourced basis, will be paid on a PAYE basis and deemed, unless otherwise agreed, to be inside IR35 and under the supervision, direction and control of the Client.
- 6.2 Where the Employment Business pays the candidate directly, the Employment Business is responsible for the payment of the Temporary Worker(s) net pay, National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003. Where the Employment Business outsources the payroll of the Temporary Worker, the outsourced provider will be responsible for the Temporary Worker(s) net pay, National Insurance Contributions and PAYE Income Tax applicable to the Temporary Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## **7.0 PLACEMENT FEE**

7.1 A Placement Fee shall be payable by the Client to the Employment Business if the Client:

7.1.0 engages the Permanent Worker on a permanent basis following an Introduction by the Employment Business.

7.1.1 engages the Temporary Worker on a permanent basis following an Introduction by the Employment Business to the Client where there is no prior period of supply.

7.1.2 engages the Temporary Worker within the Relevant Period on a permanent basis after a period of supply following the Introduction of the Temporary Worker by the Employment Business to the Client.

7.1.3 following the supply of the Temporary Worker by the Employment Business to the Client, makes use of the services of the Temporary Worker either directly or indirectly (including through another employment business) or where such Temporary Worker is provided through a supplier company, any other employees, representatives, contractors or sub-contractors of such supplier company introduced by the Employment Business) (other than pursuant to this Agreement),

7.1.4 introduces the Temporary Worker to any other person (including but not limited to any subsidiary or associated company of the Client), after which the Temporary Worker's services are used within the Relevant Period by that person or a person associated with that person (other than pursuant to this Agreement, or an equivalent agreement between the Employment Business and that person).

7.2 For the purposes of clause 7.1, where the Total Remuneration is known to the Employment Business, all Placement Fees will be 17.5% of the Total Remuneration or a minimum of £3,000, whichever is greater.

7.3 For the purposes of clause 7.1, where the Total Remuneration is not known and where there has been no prior period of supply, a flat Placement Fee of £5,000 will apply.

7.4 For the purposes of clause 7.1, where the Total Remuneration is not readily ascertainable following a period of supply, the Placement Fee will be calculated as either 40 times the daily charge rate or 250 times the hourly charge rate at which the Temporary Worker was last supplied to the Client by the Employment Business.

7.5 For the purposes of clause 7.1, where the Temporary Worker is employed on a permanent basis for a fixed term, the following Placement Fee will apply:  $(N \text{ number of months employed on a fixed term basis} / 12) \times \text{Total Remuneration} \times 17.5\%$  or a minimum of £3,000, whichever is greater.

7.6 There shall be no refund of the Placement Fee if the engagement is subsequently terminated, for whatever reason.

## **8.0 LIABILITY**

8.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.

8.2 Temporary Workers supplied by the Employment Business are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment.

8.3 The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though the Temporary Worker was on the payroll of the Client.

8.4 The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations 1998 (as amended), Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in Clause 6 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.

8.5 The Client undertakes not to request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.

8.6 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 and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment.

8.7 The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time (amendments) Regulations 2003 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 the Working Time (amendments) Regulations 2003.

8.8 Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.

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

8.10 Where the Temporary Worker is required to operate any vehicles, machinery or automated systems the Client shall be responsible for:

- a. Ensuring that the Temporary Worker has the correct Licences and/or qualifications to operate such items.
- b. Ensuring the provision of appropriate and adequate Insurance for the operation of said items.
- c. The maintenance and testing of such items prior to use.
- d. Any consequential losses as a result of the incorrect use or operation of said items.
- e. Any damage caused by the Temporary Worker whilst operating under their Supervision, Direction or Control.

8.11 Where the Temporary Worker is required to utilise their own or any lent, borrowed or leased vehicle to travel between Client sites or for any reason associated with the Clients business then whilst the Temporary Worker is involved in such activity the client shall be responsible for:

- a. Ensuring that the Temporary Worker has the correct Licences and/or qualifications to operate such items.
- b. Ensuring the provision of appropriate and adequate Insurance for the operation of said items.
- c. The maintenance and testing of such items prior to use.
- d. Any consequential losses as a result of the incorrect use or operation of said items.
- e. Under no circumstances will the Employment Business accept any responsibility for the Temporary Workers private transport or the insurance thereof.

8.11 The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with clauses 8.2, 8.3, 8.4, 8.5, 8.6, 8.9 and 8.10 and/or as a result of any breach of these Terms by the Client.



## **10.1 TERMINATION**

10.1 The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates within two hours of the Temporary Worker commencing the Assignment.

10.2 Any of the Client, the Employment Business or the Temporary Worker may terminate an Assignment at any time without prior notice and without liability and the Client agrees to pay all sums due for services provided up until the point of termination are still payable.

10.3 The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.

10.4 The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and shall terminate the Assignment under the provisions of clause 10.2.

## **11.0 LAW**

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

### **Signed on behalf of the Client:**

Name: *Alexander Stuart Westworth*

Position: Group Managing Director

Date: 01/09/2023