

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT & FIXED TERM CANDIDATES TO CLIENTS

V1 – June 2022

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms of Business, the following definitions apply unless the context requires otherwise:

Candidate

means the individual Introduced to the Client by TeacherActive for the Engagement;

Client

means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) issuing an instruction to TeacherActive to search for a Candidate in relation to each Engagement;

Data Protection Laws

means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

Engagement

means the engagement of the Candidate by the Client or by any third party to whom the Candidate has been Introduced by the Client whether under a contract of service or for services; under an 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 (following TeacherActive accepting the Client’s instruction to search for a Candidate to be Engaged by the Client) the earlier to occur of: (i) the passing to the Client by or on behalf of TeacherActive of a curriculum vitae or similar information which identifies the Candidate; or (ii) the Client’s interview of the Candidate (including interviews in person, by video link, telephone or by any other means); and “Introduces” and “Introduced” shall be construed accordingly;

Placement Fee

means the fee payable by the Client to TeacherActive for each Introduction resulting in an Engagement which, shall be 20% (or 25% for those senior appointments with Remuneration in excess of £40,000 per annum) of the Remuneration payable to the Candidate during the first 12 months of the Engagement, the payment of which is determined in accordance with clause 4;

Remuneration

means gross base salary or fees, plus any remuneration payable to the Candidate (other than gross base salary or fees), which is not excluded by the Agency Workers Regulations, such as guaranteed and/or anticipated bonus and commission earnings, allowances (including car allowance), 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 or any third party. Where the Client provides a company car and the value of this benefit is not otherwise specified, a notional amount of £4,000 will be added to the salary in order to calculate the Placement Fee;

Replacement Candidate

means any Candidate Introduced by TeacherActive 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 12 weeks of the Engagement;

TeacherActive

means TeacherActive Limited, a company registered in England and Wales with company number 05302511 whose registered office address is at 158 Edmund Street, Birmingham, West Midlands B3 2HB;

Terms of Business

means the terms of business set out in this document, including the attached schedule which are deemed to be a condition of the acceptance by TeacherActive of an instruction by the Client to seek a Candidate for a potential Engagement;

- 1.2 In these Terms of Business:
- 1.2.1 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms of Business.
 - 1.2.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.2.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
 - 1.2.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
 - 1.2.5 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provisions.
 - 1.2.6 A reference to **writing** or **written** includes email.
 - 1.2.7 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and non-exhaustive and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. OUR CONTRACT

- 2.1 These Terms of Business are incorporated into each contract between TeacherActive and the Client for the Introduction of permanent or fixed term contract staff (to be Engaged directly by the Client) and are deemed to be accepted by the Client upon the earlier of: (i) Client issuing an instruction to seek a Candidate for a potential Engagement which is accepted by TeacherActive; (ii) an Introduction; (iii) the Engagement of a Candidate; or (iv) the passing by the Client of any information regarding a Candidate to any third party following an Introduction.
- 2.2 These Terms of Business apply to the contract between TeacherActive and the Client to the exclusion of all other terms and conditions submitted from time to time by the Client. The acceptance of an instruction to seek a Candidate for a potential Engagement by TeacherActive is based on these Terms of Business. If the Client attempts to vary, augment, replace and/or incorporate any terms into the contract which are in addition to and/or inconsistent with these Terms of Business, then the Client shall be deemed to have made a counter-offer and (unless TeacherActive accepts such counter-offer in writing signed by a director of TeacherActive making specific reference to this clause 2.2) TeacherActive shall be deemed to have repeated its offer to Introduce Candidates to the Client in accordance with these Terms of Business until such time as they are accepted by the Client without revision or amendment.
- 2.3 TeacherActive 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

3.1 The Client undertakes to provide to TeacherActive details of the position which the Client seeks to fill applicable to each Engagement, including the following:

- 3.1.1 the type of work that the Candidate would be required to do;
- 3.1.2 the location and hours of work;
- 3.1.3 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;
- 3.1.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 3.1.5 the date the Client requires the Candidate to commence the Engagement;
- 3.1.6 the duration or likely duration of the Engagement if not at least 12 months;
- 3.1.7 the minimum rate of Remuneration, expenses and any other benefits that would be offered;
- 3.1.8 the intervals of payment of Remuneration; and
- 3.1.9 the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.

3.2 The Client agrees to:

- 3.2.1 notify TeacherActive immediately of the terms of any offer which the Client makes to Engage the Candidate;
- 3.2.2 notify TeacherActive immediately when the Client's offer to Engage the Candidate is accepted and to provide accurate and complete details to TeacherActive of the Remuneration agreed with the Candidate together with any documentary evidence as requested by TeacherActive; and
- 3.2.3 pay the Placement Fee, to be calculated in accordance with the provisions of clause 4 on the due date(s) for payment in clause 4.1.

3.3 If the Client's offer to Engage the Candidate is not accepted the Client shall inform TeacherActive in writing and provide any reasons which the Client is aware of as to why such offer was declined.

3.4 If the Client makes more than one offer to Engage a Candidate clauses 3.1 and 3.3 shall apply to each such offer recurrently.

4. PLACEMENT FEE

4.1 The Placement Fee is payable if the Client Engages the Candidate within the period of 6 calendar months from:

- 4.1.1 the date of the Introduction;
 - 4.1.2 the date of the Client's withdrawal of the last in time of each offer to Engage the Candidate (whether or not made in writing); or
 - 4.1.3 the date of the Candidate's rejection of the last in time of each offer to Engage the Candidate (whether or not made in writing); or
 - 4.1.4 the start date for the Engagement as notified under clause 3.1.5;
- whichever is the later date. Payment is due within 14 days of TeacherActive's invoice.

4.2 Where the actual Remuneration is not known, TeacherActive will charge a Placement Fee based on TeacherActive's determination of the Remuneration taking into account the

market rate level of remuneration applicable for the position in which the Candidate has

been Engaged and with regard to any information supplied to TeacherActive by the Client and/or comparable positions in the market generally.

- 4.3 Where prior to the commencement of the Engagement TeacherActive and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Placement Fee will be reduced by:
- 4.3.1 50% where the fixed term is no longer than 6 months; or
 - 4.3.2 25% where the fixed term is no longer than 9 months; and
- if the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Placement Fees than the Client would have been liable for had the Candidate first been Engaged for 12 months or more.
- 4.4 The Placement Fee is payable within 14 days of the date of TeacherActive's invoice.
- 4.5 TeacherActive shall be entitled to raise an invoice for each Placement Fee following acceptance by a Candidate of the Client's offer to Engage the Candidate.
- 4.6 The Client's obligations under this clause 4 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 4.7 VAT is charged at the standard rate on all Placement Fees.
- 4.8 TeacherActive 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 Lloyds Bank Plc from the due date until the date of payment.
- 4.9 If any TeacherActive staff with whom the Client has had personal dealings accept an Engagement with the Client while employed by TeacherActive or within 3 months of leaving TeacherActive, the Client shall be liable to pay TeacherActive a fee equivalent to the Placement Fee. The Client shall not be entitled to a refund for any fee due under this clause 4.9 in any circumstances.
- 4.10 In this clause 4, an offer to Engage a Candidate made by any third party whether on behalf of the Client or otherwise is deemed to be a offer made by the Client if the Candidate accepts such offer.
- 4.11 All payments by one party to the other under this agreement shall be made by transfer of cleared funds, without any set-off and shall be made free of any restriction or condition and without deduction or withholding (except to the extent required by law and/or where a valid court order has been obtained requiring an amount equal to such deduction to be paid by a party to another) on account of any other amount, whether by way of set-off or otherwise. Where the Client has a defence, counterclaim or set off against any claim brought against it by TeacherActive, the Client undertakes not to raise such defence counterclaim or set off.
5. **REPLACEMENT CANDIDATES AND REFUNDS**
- 5.1 If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant or released due to reasons of ill health) before the expiry of 12 weeks from the date of commencement of the Engagement, then:
- 5.1.1 TeacherActive will firstly have sole discretion to provide a Replacement Candidate to the Client (but shall be under no obligation to do so) and clause 5.2 shall apply, or
 - 5.1.2 secondly, and subject to the terms of clauses 5.3 to 5.7 inclusive, to refund a proportion of the Placement Fee in accordance with the scale of refunds set out in schedule 1 ("**Refund**").

- 5.2 if TeacherActive exercises its right to provide a Replacement Candidate in accordance with clause 5.1, the Client must exclusively give TeacherActive 4 weeks from the date of the notice of non- commencement or termination in which to find a Replacement Candidate. If, after 4 weeks from the date of the notice, no Replacement Candidate has been provided, or if the Replacement Candidate's Engagement is terminated before the expiry of 12 weeks from the date of commencement of the Replacement Candidate's Engagement, then the Client will be eligible for a Refund subject to the remaining provisions of this clause 5.
- 5.3 In order to qualify for a Refund in accordance with clause 5.1:
- 5.3.1 the Client must have complied with the provisions of clause 3.2 (including having paid the Placement Fee in full and on time) and must notify TeacherActive in writing of the termination of the Engagement or the non- commencement of the Engagement and complete and accurate reasons why such Engagement has been terminated or (as the case may be) did not commence within 7 days of such termination or non- commencement; and
- 5.4 For the purposes of this clause 5 the date of termination of the Engagement shall be the later of:
(i) the date on which the Candidate ceases working on the Engagement; or (ii) the date on which the Candidate would have ceased working on the Engagement, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 5.5 In circumstances where clause 4.3 applies, the full Placement Fee is payable and there shall be no entitlement to a Refund and TeacherActive shall be under no obligation to provide a Replacement Candidate.
- 5.6 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 Refund shall be repaid to TeacherActive in full. The Client shall not be entitled to any further Refunds in relation to the re-Engagement of this Candidate.
- 5.7 If an Engagement is terminated for any reason by the Client or by the Candidate and the Candidate nevertheless continues to work with the Client in any capacity, the Client shall not be entitled to a Replacement Candidate and no Refund shall be due or payable.

6. INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are strictly confidential. If the Client discloses a Candidate's details to a third party, this is deemed to be a **Third Party Introduction**. If that Third Party Introduction results in an Engagement of the Candidate by the third party within 6 months of TeacherActive's Introduction of the Candidate to the Client, then the Client will be liable to TeacherActive for payment of a Placement Fee whether or not the Client is paid anything by the Third Party. Neither the Client nor the third party shall be entitled to a Refund of the Placement Fee under clause 5 in any circumstances.

7. SUITABILITY CHECKS

- 7.1 TeacherActive shall propose Candidates who, in TeacherActive's reasonable opinion, match the requirements as notified under clause 3.1 in most respects but TeacherActive does not warrant the suitability of any Candidate for any given Engagement and the Client must satisfy itself as to the suitability of the Candidate for the position the Client is seeking to fill rather than relying on TeacherActive's recommendation.
- 7.2 TeacherActive recommends and advise the Client to consider the following:
- 7.2.1 taking up any references provided by the Candidate before Engaging the Candidate;
- 7.2.2 checking the Candidate's criminal record and status from a safeguarding perspective;
- 7.2.3 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;
- 7.2.4 the arrangement of medical examinations and/or investigations into the medical

history of any Candidate;

7.2.5 satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement; and

7.2.6 checking the Candidate's qualifications for accuracy and completeness.

7.3 Promptly after TeacherActive Introduces a Candidate to the Client, TeacherActive shall inform the Client that they have obtained confirmation of the matters set out in clauses 7.1 and 7.2. 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 Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

8. **EXCLUSIVITY**

Any agreement between TeacherActive and the Client to exclusively use the services of TeacherActive for the Introduction of Candidates in relation to all Engagements shall be agreed in writing separately to these Terms of Business.

9. **CONFIDENTIALITY AND DATA PROTECTION**

9.1 All information relating to a Candidate is confidential and subject to the Data Protection Laws 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.

9.2 The Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.

9.3 Information relating to TeacherActive'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.

10. **LIABILITY**

10.1 TeacherActive 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 TeacherActive seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of TeacherActive to introduce any Candidate. For the avoidance of doubt, TeacherActive does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

10.2 The Client shall indemnify and keep indemnified TeacherActive against any Losses incurred by TeacherActive arising out of any non-compliance with the Data Protection Laws, and/or as a result of any breach of, these Terms of Business by the Client. For the avoidance of doubt, such losses shall include all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands.

11. **GENERAL**

11.1 **Notices**

All notices which are required to be given in accordance with these Terms of Business shall be in writing and may be delivered personally or by first class prepaid post to the registered 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, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

11.2 **Severance**

If any of the provisions of these Terms of Business 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.

11.3 Variation

No variation or alteration to these Terms of Business shall be valid unless the details of such variation are agreed in writing between a director of TeacherActive and the Client.

11.4 Governing Law and Jurisdiction

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

SCHEDULE 1

Refunds

1. The following scale of Refunds only applies in the event that the Client complies with the provisions of clauses 3 and 5 of the Terms of Business.

Time in which the Engagement terminates in accordance with clause 5.2	% of Placement Fee refunded
Up to 2 weeks	100%
3-4 weeks	80%
5-6 weeks	60%
7-9 weeks	40%
10-12 weeks	20%
Over 12 weeks	Zero%