

## TERMS OF BUSINESS FOR THE SUPPLY OF TEMPORARY SUPPLY WORKERS TO CLIENTS

V3 – 26<sup>th</sup> September 2024

### 1. DEFINITIONS AND INTERPRETATION

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

#### **Assignment**

means the provision of the Supply Worker to the Client by TeacherActive to perform the services as detailed in the Request for the period of time specified in the Request during which the Supply Worker supplied by TeacherActive is working temporarily for and under the sole supervision and direction of the Client; and “**Assign**”, “**Assigns**” and “**Assigned**” shall be construed accordingly;

#### **AWR**

means the Agency Workers Regulations 2010;

#### **AWR Claim**

means any complaint or claim to a tribunal or court made by or on behalf of the Supply Worker against the Client and/or TeacherActive for any breach of the AWR;

#### **AWR Comparable Worker**

has the meaning as defined in regulation 5(4) of the AWR;

#### **AWR Qualifying Period**

means the 12-week qualifying period as defined in regulation 7 of the AWR, subject to regulations 8 and 9 of the AWR and typically (subject to evidence to the contrary) this will be 12 continuous Calendar Weeks during the whole or part of which the Supply Worker is supplied by one or more AWR Temporary Work Agencies to the Client to work for the Client under the supervision and direction of the Client **provided that** if, prior to a relevant Assignment under these Terms of Business the Supply Worker worked with the Client in the same role as the role as that in which the Supply Worker works in the relevant Assignment then in such circumstances the AWR Qualifying Period may have commenced prior to the start of the Assignment and will be calculated accordingly;

#### **AWR Temporary Work Agencies**

has the meaning as defined in regulation 4 of the AWR; and for the purpose of this definition, a **Client** means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person;

#### **Booking Confirmation Email**

means written confirmation of the Assignment details issued by TeacherActive to the Client;

#### **Calendar Week**

means for each Assignment the period of seven days starting on the day the Supply Worker commences providing services to the Client and consecutive periods of seven days in duration thereafter;

#### **Charges**

means TeacherActive's charges calculated in accordance with clause 7 and as may be varied from time to time;

#### **Client**

means the person, school, establishment, academy, college, university, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case

may be) to whom the Supply Worker is Introduced;

**Conduct Regulations**

means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**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;

**Intermediary**

means any entity (other than TeacherActive) through which a Supply Worker provides their services;

**Introduction**

means 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 Supply Worker; or (ii) the Client's interview of the Supply Worker (including interviews in person, by video link, telephone or by any other means) or (iii) the Supply Worker undertaking any work for the Client; or (iv) the Assignment of the Supply Worker; and "Introduces" and "Introduced" and "Introducing" shall be construed accordingly;

**Period of Extended Hire**

means an additional period of up to 20 weeks that the Client wishes the Supply Worker to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

**Relevant Period**

means for each Supply Worker (i) the period of 8 weeks commencing on the day after the last day on which the Supply Worker works for the Client under an Assignment; or (ii) the period of 14 weeks commencing on the first day on which the Supply Worker worked for the Client under an Assignment; or (iii) the period of 14 weeks from the first day of the most recent Assignment where there has been a break of more than 42 days since any previous work for the Client; whichever is the period which ends later than the other periods;

**Relevant Terms and Conditions**

means terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

**Remuneration**

means gross base salary or fees, plus any remuneration payable to the Supply Worker (other than gross base salary or fees), which is not excluded by the AWR, 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 Supply Worker 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 Charges;

**Request**

means a request by the Client for TeacherActive to search for Supply Workers to perform an Assignment;

**Safeguarding Legislation**

means the Safeguarding Vulnerable Groups Act 2006;

**Supply Worker**

means an individual who is Introduced by TeacherActive to provide services to the Client as an agency worker for the Assignment, and includes, unless otherwise expressly stated, any officer, employee, worker or representative of an Intermediary;

**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 together with any applicable Request;

**Transfer Fee**

means the fee payable in accordance with clause 9 and Regulation 10 of the Conduct Regulations;

**Vulnerable Person**

means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

**WTR**

means the Working Time Regulations 1998.

1.2 In these Terms of Business:

- 1.2.1 Clause 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 Supply Workers and are deemed to be accepted by the Client upon

the earlier of: (i) Client issuing a Request which is accepted by TeacherActive; (ii) an Introduction; (iii) the Assignment of a Supply Worker; or (iv) the passing by the Client of any information regarding a Supply Worker 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. 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) TeacherActive shall be deemed to have repeated its offer to Introduce Supply Workers 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 business (as defined in Section 13(3) of the Employment Agencies Act 1973) (as amended) when Introducing Supply Workers for Assignments with the Client.

### 3. **EXCLUSIVITY**

- 3.1 Any agreement between TeacherActive and the Client to exclusively use the services of TeacherActive for the Introduction of Supply Workers shall be agreed in writing separately to these Terms of Business.

### 4. **OBLIGATIONS OF THE CLIENT**

- 4.1 To enable TeacherActive to comply with its obligations under the Conduct Regulations, when making a Request the Client undertakes to provide to TeacherActive the details of the position which the Client seeks to fill, including the following:

- 4.1.1 the type of work that the Supply Worker would be required to do;
- 4.1.2 the location and hours of work;
- 4.1.3 the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Supply Worker to possess in order to work in the position;
- 4.1.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- 4.1.5 the date the Client requires the Supply Worker to commence the Assignment; and
- 4.1.6 the duration or likely duration of the Assignment

and TeacherActive will confirm such details in a Booking Confirmation Email.

- 4.2 The Client will assist TeacherActive in complying with TeacherActive's duties under the WTR by supplying any relevant information about the Assignment requested by TeacherActive and the Client will not do anything to cause TeacherActive to be in breach of its obligations under the WTR. If the Client requires the services of a Supply Worker for more than 48 hours in any week during the course of an Assignment, the Client must notify TeacherActive of this requirement before the commencement of the Assignment or at the very latest (where this is not reasonably practicable), before the commencement of the week in which the Client requires the Supply Worker to work in excess of 48 hours.

- 4.3 The Client will comply with its obligations under Regulation 12 (Rights of Supply Workers in relation to access to collective facilities and amenities) and 13 (Rights of Supply Workers in relation to access to employment) of the AWR.

- 4.4 To enable TeacherActive 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 TeacherActive's request:

- 4.4.1 to inform TeacherActive of any Calendar Weeks in which the Supply 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 AWR Qualifying Period;

- 4.4.2 if the Supply 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 TeacherActive with all the details of such work which may count towards the AWR Qualifying Period, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by TeacherActive;
- 4.4.3 to inform TeacherActive if the Supply Worker has, prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment, carried out work which could be deemed to count toward the AWR Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because the Supply Worker has:
  - (a) completed two or more work assignments with the Client; and/or
  - (b) 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;
- 4.4.4 save where the Supply Worker will not complete the full AWR Qualifying Period during the term of the Assignment, to:
  - (a) provide TeacherActive with written details of the basic working and employment conditions the Supply Worker would be entitled to for doing the same job if the Supply Worker had been recruited directly by the Client as an employee or worker  
at the time the AWR Qualifying Period commenced or with those of an AWR Comparable Worker, such basic working and employment conditions being the Relevant Terms and Conditions and such details to include, without limitation: (i) key elements of pay; (ii) duration of working time (e.g. if working is limited to a maximum of 48 hours a week); (iii) night work; (iv) rest periods; (v) rest breaks; and (vi) holiday entitlement;
  - (b) inform TeacherActive in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of an AWR Comparable Worker;
  - (c) if the Relevant Terms and Conditions provided are those of an AWR Comparable Worker, provide TeacherActive with a written explanation of the basis on which the Client considers that the relevant individual is an AWR Comparable Worker; and
  - (d) inform TeacherActive in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the AWR Qualifying Period commenced; and
  - (e) provide TeacherActive with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 4.5 In addition, for the purpose of awarding any bonus to which the Supply Worker may be entitled under the AWR, the Client will:
  - 4.5.1 integrate the Supply Worker into its relevant performance appraisal system;
  - 4.5.2 assess the Supply Worker's performance;
  - 4.5.3 provide TeacherActive with copies of all documentation relating to any appraisal of the Supply Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
  - 4.5.4 provide TeacherActive with all other assistance TeacherActive may request in connection with the assessment of the Supply Worker's performance for the purpose of awarding any bonus.
- 4.6 The Client will comply with all TeacherActive's requests for information and any

other requirements to enable TeacherActive to comply with the AWR.

4.7 The Client warrants that:

- 4.7.1 all information and documentation supplied to TeacherActive in accordance with clauses 4.4, 4.5 and 4.6 is complete, accurate and up to date; and
- 4.7.2 it will, during the term of the relevant Assignment, immediately inform TeacherActive in writing of any subsequent change in any information or documentation provided in accordance with clauses 4.4, 4.5 and 4.6.

4.8 Without prejudice to clauses 14.8 and 14.9, the Client shall inform TeacherActive in writing of any:

- 4.8.1 oral or written complaint the Supply Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and
- 4.8.2 written request for information relating to the Relevant Terms and Conditions that the Client receives from the Supply 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 will take such action and give such information and assistance as TeacherActive may request, and within any timeframe requested by TeacherActive, in order to resolve any such complaint or to provide any such information in a written statement to the Supply 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 TeacherActive with a copy of any such written statement.

4.9 The Client warrants and represents that it knows of no reason why it would be detrimental to the interests of the Supply Worker for the Supply Worker to fill the Assignment.

4.10 The Client undertakes and agrees as follows:

- 4.10.1 The Client shall provide to TeacherActive up to date information on its terms and conditions so that TeacherActive can ensure that Supply Workers receive the correct equal treatment, as if they had been recruited directly by the Client, after the AWR Qualifying Period in the same role.
- 4.10.2 The Client shall ensure that all Supply Workers can access its facilities and are able to view information as to the Client's job vacancies from the first day of their Assignment.
- 4.10.3 The Client shall ensure that all Supply Workers are treated no less favourably than AWR Comparable Workers of the Client
- 4.10.4 The Client shall ensure that Supply Workers are able to enjoy the same access as AWR Comparable Workers of the Client with regard to collective facilities and amenities provided by the Client such as but not limited to:
  - (a) a canteen or other similar facilities
  - (b) a workplace crèche
  - (c) transport services (e.g. in this context, local pick up and drop offs, transport between sites – but not company car allowances or season ticket loans)
  - (d) toilets/shower facilities
  - (e) waiting room



- (f) mother and baby room
  - (g) prayer room
  - (h) food and drinks machines
  - (i) car parking
  - (j) staff common room
- 4.11 On request, the Client will provide to TeacherActive a written statement with all relevant information relating to the rights of AWR Comparable Workers and any derogation from such rights in relation to Supply Workers.
- 5. **INFORMATION TO BE PROVIDED BY TEACHERACTIVE TO THE CLIENT**
- 5.1 When Introducing a Supply Worker to the Client, TeacherActive shall inform the Client as to:
  - 5.1.1 the identity of the Supply Worker;
  - 5.1.2 the Supply Worker's relevant experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
  - 5.1.3 the Supply Worker's willingness to work in the Assignment; and
  - 5.1.4 the Charges.
- 5.2 TeacherActive will vet the Supply Workers Introduced to the Client to a reasonable extent, but it is the sole responsibility of the Client to satisfy itself as to the suitability of the Supply Worker for the position the Client is seeking to fill and TeacherActive excludes any and all liability if the Supply Worker is, for any reason, unsuitable.
- 6. **TIMESHEETS**
- 6.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Client shall authorise TeacherActive's timesheet verifying the amount of time worked by the Supply Worker during that week.
- 6.2 Authorisation of the timesheet by the Client is confirmation of the amount of time worked. If the Client is unable to authorise a timesheet produced for authentication by the Supply Worker because the Client disputes the times claimed, the Client shall inform TeacherActive as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with TeacherActive to enable TeacherActive to establish what times, if any, were worked by the Supply Worker. **Failure to authorise the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the time worked.**
- 6.3 The Client shall not be entitled to decline to authorise a timesheet on the basis that it is dissatisfied with the work performed by the Supply Worker. In the event that the Client is dissatisfied with the Supply Worker the provisions of clause 11 below shall apply.
- 7. **CHARGES**
- 7.1 The Client agrees to pay the Charges as notified to the Client both during and after the AWR Qualifying Period. The Charges are calculated according to the units worked by the Supply Worker (e.g. hours, full day, morning or afternoon, to be agreed with the Client in each case) and comprise the following:
  - 7.1.1 the Supply Worker's rate of pay;
  - 7.1.2 an amount equal to any paid holiday leave to which the Supply Worker is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment;
  - 7.1.3 any other amounts to which the Supply Worker is entitled under the AWR, where applicable;
  - 7.1.4 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; and

- 7.1.5 TeacherActive's commission including an element for employment costs, apprenticeship levy and taxes.
- 7.2 TeacherActive reserves the right to vary the Charges by giving notice to the Client:
  - 7.2.1 in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, the WTR, the Income Tax (Earnings and Pensions) Act 2003, the Social Security (Categorisation of Earners) Regulations 1978, the Pensions Act 2008 and the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay As You Earn) (Amendment) Regulations 2017;
  - 7.2.2 if there is any variation in the Relevant Terms and Conditions; and
  - 7.2.3 following an annual review of the Charges by TeacherActive in line with TeacherActive's revision of similar charges across its business generally.
- 7.3 If the Client wishes to cancel an Assignment (or any day(s) making up an Assignment), the Client must notify TeacherActive in writing by no later than 4pm on the day before the Assignment (or day making up an Assignment) is due to commence. For any cancellations received after such 4pm deadline, the Assignment shall continue until close of business on the day following the Client's notification and the Client agrees to pay for any time worked up to the point of termination.
- 7.4 The Client will continue to be liable for the Charges in circumstances where the school may be closed or have reduced staffing requirements for any reason including industrial action, snow days or government-mandated shutdowns.
- 7.5 TeacherActive will invoice the Charges to the Client on a weekly basis. The Client will pay the Charges by the date specified on the invoice.
- 7.6 In addition to the Charges, the Client will pay TeacherActive an amount equal to any bonus that the Client awards to the Supply Worker in accordance with clause 4.5 immediately following any such award, and TeacherActive will pay any such bonus to the Supply Worker. For the avoidance of doubt, the Client will also pay any employment-related costs and TeacherActive's commission on the bonus in addition to any bonus payable to the Supply Worker.
- 7.7 VAT is payable at the applicable rate on the entirety of the Charges together with all sums payable under clause 7.6.
- 7.8 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.
- 7.9 TeacherActive will not refund any of the Charges which relate to approved or undisputed timesheets.
- 7.10 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.
- 8. PAYMENT OF THE SUPPLY WORKER**
  - 8.1 Where TeacherActive directly employs the Supply Worker, TeacherActive is responsible for paying the Supply Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Supply Worker pursuant to sections 44 – 47 of the Income Tax (Earnings and Pensions) Act 2003.
  - 8.2 Where the Supply Worker is employed by an Intermediary, TeacherActive is responsible for paying the Intermediary, and the Intermediary is responsible for paying the Supply Worker and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Supply Worker pursuant to sections 44 – 47 of the



Income Tax (Earnings and Pensions) Act 2003.

9. **TRANSFER FEES**

9.1 The Client shall be liable to pay a Transfer Fee if the Client engages, hires or provides work to a Supply Worker Introduced by TeacherActive other than via TeacherActive or introduces the Supply Worker to a third party and such introduction results in an Engagement of the Supply Worker by the third party other than via TeacherActive and:

9.1.1 where the Supply Worker has been supplied by TeacherActive, such Assignment takes place during the Assignment or within the Relevant Period; or

9.1.2 where the Supply Worker has not been supplied, such Assignment takes place within 6 months from the date of the Introduction to the Client.

9.2 The Transfer Fee will be calculated as 20% of the Remuneration applicable during the first 12 months of the relevant contract of employment of the Supply Worker and if the actual Remuneration is not known, TeacherActive will charge a Transfer Fee based on TeacherActive's determination of such Remuneration taking into account the market rate level of remuneration applicable for the position in which the Supply Worker has been employed to do and with regard to any information supplied to TeacherActive by the Client and/or comparable positions in the market generally.

9.3 If the Client wishes to Assign the Supply Worker other than via TeacherActive without liability to pay a Transfer Fee, the Client may, on giving one week's written notice to TeacherActive, engage the Supply Worker for the Period of Extended Hire.

9.4 During such Period of Extended Hire, TeacherActive shall supply the Supply Worker on the same terms on which the Supply Worker has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before TeacherActive received the notice in clause 9.3; and the Client shall continue to pay the Charges set out in clause 7. If TeacherActive is unable to supply the Supply Worker for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Supply Worker on the same terms as the Assignment; but the Supply Worker is Assigned by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Supply Worker before being Assigned by the Client. If the Client fails to give notice of its intention to Assign the Supply Worker other than via TeacherActive before such Assignment commences, the parties agree that the Transfer Fee shall be due in full.

9.5 Where prior to the commencement of the Client's Assignment other than via TeacherActive, TeacherActive and the Client agree that such Assignment will be on the basis of a fixed term of less than 12 months, TeacherActive may, in its absolute discretion, reduce the Transfer Fee pro-rata. Such reduction is subject to the Client Assigning the Supply Worker for the agreed fixed term. Should the Client extend the Supply Worker's Assignment or re-Assign the Supply Worker within 12 months from the commencement of the initial Assignment, TeacherActive reserves the right to recover the balance of the Transfer Fee.

9.6 TeacherActive will not refund the Transfer Fee in the event that the Assignment of the Supply Worker other than via TeacherActive by the Client or by a third party to which the Client introduces the Supply Worker terminates or terminates before the end of the fixed term referred to in clause 9.4.

9.7 VAT is payable in addition to any Transfer Fee due.

10. **SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS**

10.1 Where:

10.1.1 the Supply Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, TeacherActive will take all reasonably practicable steps to obtain and offer to provide to the Client copies of any relevant qualifications or authorisations of the Supply Worker; and

- 10.1.2 in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, TeacherActive will take all reasonably practicable steps to obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Supply Worker and who have agreed that the references they provide may be disclosed to the Client; and such other reasonably practicable steps as are required to confirm that the Supply Worker is suitable for the Assignment. If TeacherActive has taken all reasonably practicable steps to obtain the information above 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.
- 10.2 The Client shall advise TeacherActive at the time of instructing TeacherActive to supply a Supply Worker whether during the course of the Assignment, the Supply Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Legislation.
- 10.3 The Client shall assist TeacherActive by providing any information required to allow TeacherActive to comply with its statutory obligations under the Safeguarding Legislation and to allow TeacherActive to select a suitable Supply Worker for the Assignment.
- 10.4 In particular in the event that the Client removes a Supply Worker from an Assignment in circumstances which would require TeacherActive to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Legislation, the Client will provide sufficient information to TeacherActive to allow it to discharge its statutory obligations.
- 11. UNSUITABILITY OF THE SUPPLY WORKER**
- 11.1 The Client undertakes to supervise the Supply Worker sufficiently to ensure the Client's satisfaction with the Supply Worker's standards of work. If the Client reasonably considers that the services of the Supply Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Supply Worker to leave the Assignment immediately, or by directing TeacherActive to remove the Supply Worker. The Client shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 11.2 TeacherActive shall notify the Client immediately if it receives or otherwise obtains information which gives TeacherActive reasonable grounds to believe that any Supply Worker supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 11.3 The Client shall notify TeacherActive immediately and without delay and in any event within 2 hours if the Supply Worker fails to attend work or has notified the Client that they are unable to attend work for any reason.
- 12. TERMINATION OF THE ASSIGNMENT**
- Any of the Client, TeacherActive or the Supply Worker may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Client, who shall be liable for any Charges due under clause 7 above).
- 13. CONFIDENTIALITY AND DATA PROTECTION**
- 13.1 All information relating to a Supply Worker 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 and the Client undertakes to comply with Data Protection Laws at all times.
- 13.2 TeacherActive undertakes to keep confidential all Relevant Terms and Conditions that the Client discloses to TeacherActive and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Supply Worker or any AWR Claim).
- 13.3 Information relating to TeacherActive's business which is capable of being confidential must be kept confidential by the Client and not divulged to any third party, except information

which is in the public domain.

#### 14. **LIABILITY**

- 14.1 Whilst reasonable efforts are made by TeacherActive to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Supply Worker and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by TeacherActive for any loss, expense, damage or delay arising from any failure to provide any Supply Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Supply Worker or if the Supply Worker terminates the Assignment for any reason.
- 14.2 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.
- 14.3 Supply Workers supplied by TeacherActive pursuant to these Terms of Business are engaged under contracts for services. They are not the employees of TeacherActive but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Supply Worker, whether wilful, negligent or otherwise as though the Supply Worker was on the payroll of the Client.
- 14.4 The Client shall advise TeacherActive of any special health and safety matters about which TeacherActive is required to inform the Supply Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Supply Worker is to fill the Assignment.
- 14.5 The Client will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the WTR, the Data Protection Laws, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), 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 8 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Supply Worker during all Assignments.
- 14.6 The Client undertakes not to request the supply of a Supply Worker 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.
- 14.7 The Client shall indemnify and keep indemnified TeacherActive against any losses incurred by TeacherActive arising out of any Assignment or arising out of any non-compliance with, 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.
- 14.8 The Client shall inform TeacherActive 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.
- 14.9 If the Supply Worker brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as TeacherActive may request, and within any timeframe requested by TeacherActive 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.

#### 15. **GENERAL**

##### 15.1 **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, including 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.

**15.2 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 of Business, which shall continue to be valid to the fullest extent permitted by applicable laws.

**15.3 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.

**15.4 Third Party Rights**

None of the provisions of these Terms of Business are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

**15.5 Status**

Supply Workers may be employed by TeacherActive directly or may be employed by an Intermediary that provides the Supply Worker back to TeacherActive. Clause 8 sets out the responsibilities of paying a Supply Worker.

**15.6 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.