

TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF

1. DEFINITIONS

In these Terms of Business the following definitions apply:

"Applicant"	means an individual introduced to the Client by CER for an Engagement;
"CER"	means Monarch Education Limited (Reg. No. 07941497) t/a CER and whose registered office is at Temple Point, 1 Temple Row, Birmingham, B2 5LG;
"The Client"	means the person, institution, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to which the Applicant is introduced;
"Data Controller"	means <ul style="list-style-type: none"> (i) "data controller" as defined by the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and (ii) "controller" as defined by the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018;
"Data Protection Legislation"	means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation: <ul style="list-style-type: none"> a) the Data Protection Act 1998; b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;
"Engagement"	means any employment, engagement or use of an Applicant by a Client, whether under a contract of service or for services, agency arrangement or any other engagement;
"Fee"	means 20% of the Gross Remuneration or £4,000 whichever is greater;
"Gross Remuneration"	means the gross equivalent annualised taxable salary payable to the Applicant upon Engagement;
"Anticipated Gross Remuneration"	means the Gross Remuneration that the Client expects to offer to a successful Applicant as notified to CER prior to the commencement of any search;
"Introduction"	means the Client's interview of an Applicant in person or by telephone, following the Client's instruction to CER to search for an Applicant or the passing to the Client of a curriculum vitae or information which identifies the Applicant;
"Personal Data"	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation;
"Personal Data Breach"	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with these Terms or which otherwise relates to any Applicant;

"Process"	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation and "Processed" and "Processing" will be construed accordingly;
"Retained Assignment"	means an exclusive engagement of CER by the Client to source and Introduce Applicants for a specific vacancy;
"Shortlist"	means the Introduction of a minimum of three (3) Applicants that are, in the reasonable opinion of CER, suitable for Engagement by the Client.

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

The headings contained within these terms are for convenience only and do not affect their interpretation.

2. GENERAL

- 2.1 CER acts as an Employment Agency within the meaning of the Employment Agencies Act 1973.
- 2.2 These Terms govern the supply of Applicants to the Client and are applicable to any and all Introductions. These Terms are deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of an Applicant.
- 2.3 No variation or alternation of these terms shall be valid unless approved in writing by both CER and the Client.
- 2.4 Unless otherwise agreed in writing, these terms shall prevail over any terms of business provided by the Client.
- 2.5 The failure by CER to enforce at any particular time any one or more of the terms of these Terms shall not be deemed a waiver of such rights or of the right to subsequently enforce these Terms.
- 2.6 If any provision, clause or sub-clause of these Terms is held to be invalid, void, illegal or otherwise unenforceable by a judicial body, the remaining provisions of the Terms shall remain in full force and effect to the extent permitted by law.
- 2.7 CER will invoice the Client for the Fee upon written acceptance of the position from the Applicant. All payments due to CER pursuant to these terms shall be paid within 14 days of the date of any invoice. In respect of any amount to be paid by the Client to CER pursuant to these terms, CER reserves the right to charge interest on any unpaid amounts at the rate of 4% per annum above the base rate of Lloyds TSB Bank plc from the due date until the date of payment, and to claim legal costs, where such amount remains outstanding for more than 14 days from the date of the invoice.
- 2.8 Whilst CER agrees to make every reasonable effort to ensure reasonable standards of skills, integrity, reliability and suitability of Applicants introduced to the Client, it is the responsibility of the Client to satisfy itself on all such matters and on the suitability of any Applicant before Engagement.
- 2.9 The Client acknowledges and agrees that certain group companies of CER Staffing Solutions Limited may from time to time contact the Client to offer services which may be of interest to the Client.
- 2.10 These terms shall be subject to and interpreted in accordance with the laws of England and CER and the Client shall submit to the exclusive jurisdiction of the Courts of England.
- 2.11 All invoices issued pursuant to these terms will be subject to value added tax on the full amount of the invoice.
- 2.12 A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right of remedy of a third party which exists or is available apart from that Act.
- 2.13 Save for any information already in the public domain or any information which subsequently comes into the public domain other than by a breach of this clause, neither CER nor the Client shall use or disclose any information (including without limitation any trade secrets, business or commercially sensitive information) obtained from the other except as necessary for the performance of these terms.
- 2.14 CER acknowledges that if the Client is in the public sector it will be subject to the Freedom of Information Act 2000 ("the Act"). Where the Act applies each party to these terms shall transfer any request for information related to CER, to these terms or to any services provided by CER received under that Act to the other within two working days after receipt. Notwithstanding the right of the Client, in its sole discretion, to decide how to respond to such request, it shall take CER's views into account to the extent that such request relates to information about CER or these terms. The Client shall also notify CER as soon as practicable where any response to such request is referred to the Information Commissioner.

3. VAT

- 3.1 The Parties acknowledge that the fees/charges of CER have been calculated taking into account the recoverability of input VAT wholly or partly attributable to the provision of such Services.
- 3.2 Where, as a result of any change of law, any new or amended VAT ruling, any new or altered practice or interpretation of HMRC or any court or tribunal decision (which events shall be referred to individually or collectively as a Change of Law), CER suffers any restriction or reduction in the amount of input VAT wholly or partly attributable to the provision of the Services in respect of which it is entitled to credit or repayment:
- a) the amount of the fees/charges of CER payable by the Client shall, with effect from the date of such Change of Law, be increased so as to ensure that CER is put in the same financial position as if no such Change of Law had occurred; and
 - b) any amount payable by the Client to CER pursuant to (a) shall be paid, in addition to and at the same time as any other consideration for the Services, and without any deduction, set off or withholding.
- 3.3 Where as a result of any Change of Law, the fees/charges of CER already supplied are deemed, as a result of such change, to have borne an amount in respect of VAT which was not VAT properly due thereon (Overpaid VAT), and the Client requests in writing that CER seeks a refund from HMRC in respect of such Overpaid VAT then, subject to the Client indemnifying and holding harmless CER for the costs and expenses incurred pursuant to any action taken under this clause 3.3 and subject to clause 3.4:
- a) CER shall take such action as may be necessary to claim a refund of the Overpaid VAT to the fullest amount permitted under UK legislation; and
 - b) CER shall remit to the Client a sum equal to the amount actually received from HMRC in respect of such claim, less any costs and expenses incurred in or as a consequence of making such claim (to the extent not previously recovered pursuant to the indemnity above) and less an amount equal to any restriction or reduction (as a result of the Change in Law) in the amount of input VAT wholly or partly attributable to the provision of the Services already supplied in respect of which it is entitled to credit or repayment.
- 3.4 CER shall not be required to take any action referred to in clause 3.3(a) which involves engaging in any litigation or dispute with HMRC or any other tax authority or any third party, and shall not be obliged to take or omit to take any action which it, in its sole discretion, believes is or could be contrary to the interests of its business.
- 3.5 For the avoidance of doubt, save in accordance with clause 3.3, CER shall have no liability to pay any amount to the Client in respect of any Overpaid VAT.

4. NOTIFICATION AND FEES

- 4.1 The Client agrees:
- a) to notify CER immediately in writing of any offer of an Engagement which it makes to the Applicant; and
 - b) to notify CER immediately in the event its offer of an Engagement is accepted, whereupon CER will be entitled to invoice the Client; and
 - c) to pay the Fee within 14 days of date of invoice; and
 - d) to pay VAT, if applicable, on all charges.
- 4.2 In the case of a Retained Assignment, the Fee shall become payable as follows:
- a) 7% of the Anticipated Gross Remuneration, payable upon acceptance of the Retained Assignment by CER;
 - b) 6% of the Anticipated Gross Remuneration, payable upon provision to the Client of the Shortlist; and
 - c) 20% of the Gross Remuneration, less any fees already paid in accordance with (a) and (b), payable upon Engagement of an Applicant from the Shortlist.
- 4.3 In the event that the Client cancels a Retained Assignment at any stage prior to the presentation of the Shortlist then the Client shall be liable to pay a proportion of the fee stated in 4.2(b) that is reasonable and proportional to the work undertaken up to the point of cancellation.
- 4.4 In the event that the Client cancels a Retained Assignment at any stage after the submission of the Shortlist by CER, the Client shall be liable to pay the fee stated in 4.2(c) based on the Anticipated Gross Remuneration.

5. REPLACEMENT

- 5.1 Should the Applicant, having taken up an Engagement with the Client, terminate such Engagement within four (4) weeks, CER's sole liability to the Client shall be to offer to present other suitable Applicants on an expenses only basis, provided always that written notification is received by CER within 7 days of the termination of the Engagement and that the invoice issued by CER has been paid in full within 14 days of the date of invoice.
- 5.2 If the Client subsequently engages or re-engages the Applicant within the period of 6 calendar months from the date of termination of the Engagement or withdraws the offer, the Fee becomes payable and there should be no entitlement to a replacement.

6. CANCELLATION FEE

- 6.1 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it, the Client shall be liable to pay CER the full Fee or £4,000, whichever is the greater.

7. INTRODUCTION

- 7.1 Introductions are confidential. If the Client or any representative or employee of the Client refers the Applicant to any other person, or corporation within 4 months of the initial Introduction, and that person, firm or corporation engages that Applicant on a permanent, temporary or freelance basis, then Fee shall become payable by the Client as though the Client themselves had engaged the Applicant.
- 7.2 Where the amount of the Gross Remuneration is not known the Fee will be calculated by CER on the minimum level of remuneration applicable for the position in which the Applicant has been engaged with regard to any information supplied to CER by the Client and/or comparable positions in the market generally for such positions.

8. SUITABILITY AND REFERENCES

- 8.1 CER endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant 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 that the Applicant is willing to work in the position which the Client seeks to fill.
- 8.2 At the same time as proposing an Applicant to the Client, CER shall inform the Client of such matters in clause 8.1 as they have obtained confirmation of. 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 Applicant is being proposed for a position which is the same as one in which the Applicant has worked within the previous five business days and such information has already been given to the Client.
- 8.3 CER endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 8.4 CER endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.
- 8.5 Notwithstanding clauses 8.1, 8.2, 8.3 and 8.4 above the Client shall satisfy itself as to the suitability of the Applicant to it or CER before engaging such Applicant. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.
- 8.6 To enable CER to comply with its obligations under clauses 8.1, 8.2, 8.3 and 8.4 above the Client undertakes to provide to CER details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition the Client shall provide details of the date the Client requires the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that the applicant would be entitled to give and receive to terminate the employment with the Client.

9. REFERENCES

- 9.1 CER will take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. If CER is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

10. LIABILITY

- 10.1 CER 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 CER seeking an Applicant for the Client or from the Introduction to or Engagement of any Applicant by the Client or from the failure of CER to introduce any Applicant.

11. DATA PROTECTION

- 11.1 For the purposes of this clause 11 "Data Subject" means as set out in, and will be interpreted in accordance with, the Data Protection Legislation. For the avoidance of doubt, references to Data Subjects include Applicants.
- 11.2 The parties hereto acknowledge that CER is a Data Controller in respect of the Personal Data of Applicants and provides such Personal Data to Client in accordance with the Data Protection Legislation for the purposes anticipated by these Terms.
- 11.3 The parties hereto acknowledge that Client is also a Data Controller but the parties hereto are not Joint Controllers (as defined within the Data Protection Legislation) save where a specific agreement is made to that effect between the parties here to as an addendum to these terms.
- 11.4 The parties hereto warrant to each other that any Personal Data relating to a Data Subject, whether provided by the Client, CER or by an Applicant, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation.
- 11.5 The parties hereto will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.
- 11.6 the Client will -
- a) comply with the instruction of CER as regards the transfer/sharing of data between the parties hereto. If the Client requires Personal Data not already in its control to be provided by CER, the Client will set out its legal basis for the request of such data and accept that CER may refuse to share/transfer such Personal Data where, in the reasonable opinion of CER, it does not comply with its obligations in accordance with the Data Protection Legislation;
 - b) ensure it has met any obligations under the Data Protection Legislation to keep a record of its Processing activities in respect of Applicants;
 - c) not cause CER to breach any of its obligations under the Data Protection Legislation.
- 11.7 In the event the Client becomes aware of an actual or any reasonably suspected Personal Data Breach in respect of an Applicant, it will immediately notify CER and will provide CER with a description of the Personal Data Breach, the categories of data that was the subject of the Personal Data Breach and the identity of each Data Subject affected and any other information CER reasonably requests relating to the Personal Data Breach.
- 11.8 In the event of a Personal Data Breach in respect of an Applicant, the Client will promptly (at its own expense) provide such information, assistance and cooperation and do such things as CER may request to -
- a) investigate and defend any claim or regulatory investigation;
 - b) mitigate, remedy and/or rectify such breach; and
 - c) prevent future breaches.
- and will provide CER with details in writing of all such steps taken.
- 11.9 The Client will not release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of CER, unless the client is required to give such notice under the Data Protection Legislation.
- 11.10 The Client agrees it will only Process Personal Data of an Applicant for the purposes of considering the Applicant for Engagement as contemplated by these terms.
- 11.11 The Client will provide evidence of compliance with clause 11 upon request from CER.
- 11.12 The Client will indemnify and keep indemnified CER against any costs, claims or liabilities incurred directly or indirectly by CER arising out of or in connection with any failure of the Client to comply with clause 11; including any finding by a relevant authority that the Client was acting as a Data Processor (as defined in the Data Protection Legislation) on behalf of CER.