

## TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT STAFF

### 1. DEFINITIONS

In these Terms of Business the following definitions apply: -

<b>"Applicant"</b>	means an individual introduced to the Client by Monarch for an Engagement;
<b>"Monarch"</b>	means Monarch Education Limited (registered number 07941497) whose registered office is situated at Temple Point, 1 Temple Row, Birmingham;
<b>"The Client"</b>	means the person, institution, firm, public or corporate body together with any subsidiary or associated company as defined by the Companies Act 2006 to which the Applicant is introduced;
<b>"Data Controller"</b>	means <ul style="list-style-type: none"> <li>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;</li> </ul>
<b>"Data Protection Legislation"</b>	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"> <li>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;</li> </ul>
<b>"Engagement"</b>	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;
<b>"Fee"</b>	means <ul style="list-style-type: none"> <li>a) for permanent engagement, 20% of the Gross Remuneration, ("Gross Remuneration" means the gross equivalent annualised taxable salary payable to the Applicant) or £3,000, whichever is the greater; or</li> <li>b) a fixed one-term engagement fee of £2,000, a fixed two term engagement fee of £3,000 and the difference between the two-term fee &amp; the 20% permanent fee for the third term;</li> </ul>
<b>"Introduction"</b>	means the Client's interview of an Applicant in person or by telephone, following the Client's instruction to Monarch to search for an Applicant or the passing to the Client of a curriculum vitae or other relevant information that identifies the Applicant;
<b>"Personal Data"</b>	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation;
<b>"Personal Data Breach"</b>	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;
<b>"Process"</b>	means as set out in, and will be interpreted in accordance with, the Data Protection Legislation and "Processed" and "Processing" will be construed accordingly.

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 Monarch 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 Monarch 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 All payments due to Monarch 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 Monarch pursuant to these terms, Monarch 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.
- 2.6 Whilst Monarch 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.
- 2.7 These terms shall be subject to and interpreted in accordance with the laws of England and Monarch and the Client shall submit to the exclusive jurisdiction of the Courts of England.
- 2.8 All invoices issued pursuant to these terms will be subject to value added tax on the full amount of the invoice.
- 2.9 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.
- 2.10 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 Monarch nor the Client shall use or disclose any information (including without limitation any trade secrets, business or commercially sensitive information) obtained from the other party except as necessary for the performance of these terms.
- 2.11 Monarch 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 Monarch, to these terms or to any services provided by Monarch 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 Monarch's views into account to the extent that such request relates to information about Monarch or these terms. The Client shall also notify Monarch 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 Monarch 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"), Monarch 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 Monarch payable by the Client shall, with effect from the date of such Change of Law, be increased so as to ensure that Monarch 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 Monarch 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 Monarch 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 Monarch seeks a refund from HMRC in respect of such Overpaid VAT then, subject to the Client indemnifying and holding harmless Monarch for the costs and expenses incurred pursuant to any action taken under this clause 3.3 and subject to clause 3.4:
- a) Monarch 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) Monarch 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 Monarch 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, Monarch 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 Monarch immediately in writing of any offer of an Engagement which it makes to the Applicant; and
  - b) to notify Monarch immediately in the event its offer of an Engagement is accepted; and
  - c) to pay the Fee within 14 days of the date of invoice; and
  - d) to pay VAT, if applicable, on all charges.

#### 5. FIXED TERM TO PERMANENT

- 5.1 Should the Client elect to engage a fixed term applicant on a permanent basis at the end of their fixed term period then a fixed term to permanent fee will become payable.
- 5.2 The fee will be calculated as 20% of the Gross Remuneration the applicable to the Applicant or £3,000, whichever is greater, minus the fixed term fee already paid by the Client.

Example for illustrative purposes only based on client offering Applicant permanent engagement at the end of the Applicants 2 term fixed term period:

Applicants Gross Remuneration is £30,000

Fee is 20% of Gross Remuneration minus £3,000 fixed fee = £6,000 - £3,000

Fee payable by Client =£3,000

#### 6 REFUND

- 6.1 Should the Applicant, having taken up a permanent Engagement with the Client terminate such Engagement the Client may be eligible for a refund provided always that written notification is received by Monarch within 7 days of the termination of the Engagement and that the invoice issued by Monarch has been paid in full within 14 days of the commencement of the Engagement, in which case the Client will be entitled to the following refund:
- a) within 2 weeks from the commencement of the Engagement – 80% of the Fee
  - b) within 6 weeks from the commencement of the Engagement, or one school half term (whichever is the shorter) – 50% of the Fee
  - c) within 12 weeks from the commencement of the Engagement, or one school term (whichever is the shorter) – 25% of the Fee
- 6.2 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 of the offer, the Fee becomes payable and there should be no entitlement to refund.
- 6.3 For the avoidance of doubt, no refund will be payable to the Client where the Client chooses to offer a fixed term Applicant a permanent role, as the ability of the Applicant is deemed proven.

## 7. CANCELLATION FEE

- 7.1 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 Monarch a minimum fee of £3,000.

## 8. INTRODUCTION

- 8.1 Introductions are confidential and subject to the provisions of 2.10 in respect of the Applicant's personal data. If the Client or any representative or employee of the Client refers the Applicant to any other person, or corporation within four (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.
- 8.2 Where the amount of the Gross Remuneration is not known the Fee will be calculated by Monarch on the minimum level of remuneration applicable for the position in which the Applicant has been engaged with regard to any information supplied to Monarch by the Client and/or comparable positions in the market generally for such positions.

## 9. SUITABILITY AND REFERENCES

- 9.1 Monarch 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.
- 9.2 At the same time as proposing an Applicant to the Client, Monarch shall inform the Client of such matters in clause 9.1 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.
- 9.3 Monarch 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.
- 9.4 Monarch 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.
- 9.5 Notwithstanding clauses 9.1, 9.2, 9.3 and 9.4 above the Client shall satisfy itself as to the suitability of the Applicant to it or Monarch 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.
- 9.6 To enable Monarch to comply with its obligations under clauses 9.1, 9.2, 9.3 and 9.4 above the Client undertakes to provide to Monarch 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.

## 10. REFERENCES

- 10.1 Monarch 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 Monarch 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.

## 11. LIABILITY

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

## 12. DATA PROTECTION

- 12.1 For the purposes of this clause 12 "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.
- 12.2 The parties acknowledge that Monarch 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.
- 12.3 The parties acknowledge that the Client is also a Data Controller but the parties are not Joint Controllers (as defined within the Data Protection Legislation) save where a specific agreement is made to that effect between the parties as an addendum to these terms.
- 12.4 The parties warrant to each other that any Personal Data relating to a Data Subject, whether provided by the Client, Monarch or by an Applicant, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation.
- 12.5 The parties will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure.
- 12.6 The Client will -
- a) comply with the instruction of Monarch 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 Monarch, the Client will set out its legal basis for the request of such data and accept that Monarch may refuse to share/transfer such Personal Data where, in the reasonable opinion of Monarch, 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 Monarch to breach any of its obligations under the Data Protection Legislation.
- 12.7 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 Monarch and will provide Monarch 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 Monarch reasonably requests relating to the Personal Data Breach.
- 12.8 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 Monarch 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 Monarch with details in writing of all such steps taken.
- 12.9 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 Monarch, unless the client is required to give such notice under the Data Protection Legislation.
- 12.10 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.
- 12.11 The Client will provide evidence of compliance with clause 12 upon request from Monarch.
- 12.12 The Client will indemnify and keep indemnified Monarch against any costs, claims or liabilities incurred directly or indirectly by Monarch arising out of or in connection with any failure of the Client to comply with clause 12; 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 Monarch.