

## The Education Network (T.E.N.)

### TERMS AND CONDITIONS OF BUSINESS FOR THE SUPPLY OF TEMPORARY WORKERS

#### 1 DEFINITIONS

In these Terms and Conditions of Business the following definitions shall apply: -

**"Assignment"** means the period during which the Worker is supplied to provide services to the Hirer;

**"AWR"** means the Agency Workers Regulations 2010;

**"Hirer"** means the person, firm, school, governing body, local authority or company to whom The Education Network supplies a Worker;

**"Hirer Associated Company"** means any holding company or undertaking of the Hirer and any subsidiaries and subsidiary undertakings of the Hirer or such holding company or undertaking, where a "subsidiary", "subsidiary undertaking" and "holding company" have the meanings ascribed to them by the Companies Act 2006

**"The Education Network"** means the employment business The Education Network (trading name of T.E.N. (The Education Network – Employment Services) Ltd, Company Registration No. 3178495, Meriden Hall, Main Road, Meriden, Warwickshire, CV7 7PT;

**"Services"** means the introduction and/or provision of a Worker(s) to the Hirer in accordance with these Terms;

**"Terms"** means these Terms and Conditions of Business;

**"Contract"** means these Terms between The Education Network and the Hirer;

**"Worker "** means any person, firm, business or limited company employed or engaged by The Education Network and introduced to or supplied to the Hirer for the purpose of carrying out work.

#### 2 THE TERMS

2.1 These Terms shall govern the supply of Workers to the Hirer by The Education Network and are effective from the date a Worker commences an Assignment with the Hirer.

2.2 The hire or use of a Worker by the Hirer shall be deemed to constitute acceptance by the Hirer of these Terms.

2.3 These Terms contain the entire agreement between the parties ("the Contract") and shall prevail over any other terms and conditions or purchase conditions put forward by the Hirer.

2.4 All Workers supplied to the Hirer shall be either employed by The Education Network and provided with a statement of terms and conditions of employment in terms of section 1 of the Employment Rights Act 1996, or engaged by The Education Network under a contract for services.

2.5 In supplying the Services The Education Network is acting as an employment business in terms of section 13 of the Employment Agencies Act 1973.

#### 3 THE CHARGES

3.1 The Hirer agrees to pay The Education Network the hourly, daily or part daily charges as notified at the time of booking of the Worker for all hours, parts of hours, days or part days worked by the Worker.

3.2 The Education Network shall be entitled at any time during the course of an Assignment to notify the Hirer of any increase to the charges that are required

to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR.

3.3 The Education Network's charges invoiced to the Hirer are payable not later than 28 days from the date of the invoice. The Education Network reserves the right to charge interest on any invoices unpaid after such date at a rate equal to 4% above the base rate of the Bank of Scotland at the time being in force calculated on a daily basis.

3.4 The Education Network will, where appropriate, be responsible for the payment of remuneration, and for the deduction and payment of all statutory contributions, National Insurance contributions and the administration of Schedule E Income Tax (P.A.Y.E.) in respect of the Worker where appropriate.

3.5 There are no rebates or refunds payable in respect of the charges made by The Education Network hereunder unless these have been previously agreed in writing by a The Education Network's manager.

3.6 If the Hirer fails to pay any invoices by the due date The Education Network reserve the right to terminate the Contract and upon such termination, all unpaid invoices which have not as yet become due for payment, shall immediately become payable in full.

3.7 The Education Network understand and will exercise its statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if The Education Network is not paid in accordance with the agreed payment terms.

#### 4 TIMESHEETS

4.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Hirer shall sign if requested and pass to The Education Network, the Education Network's time sheet or otherwise verify the number of hours, days or part days worked by the Worker during that week.

4.2 Signature of the timesheet or verification by the Hirer is confirmation of the number of hours, days or part days worked. If the Hirer is unable to sign a timesheet or is unwilling to authorise a timesheet because they dispute the hours, days or part days claimed, the Hirer should inform The Education Network within 48 hours and shall co-operate fully and in a timely fashion with The Education Network to enable The Education Network to establish what hours were worked by the Worker. Failure to sign the timesheet does not absolve the Hirer's obligation to pay the charges in respect of the hours worked.

4.3 The Hirer shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Worker. In cases of unsuitable work the Hirer shall apply the provision of Clause 5 below.

#### 5 COMPLAINTS

5.1 In the event that the Hirer has any reasonable cause to complain to The Education Network about a Worker or the standard of work carried out by a Worker, the Hirer must notify The Education Network of the complaint within 6 hours of the Worker commencing the Assignment. In those circumstances The Education Network will make no

charge for the Worker up to a maximum of 6 hours, providing the complaint is received within the said 6 hour period and confirmed in writing by the Hirer and such confirmation is received by The Education Network within 48 hours of the original complaint.

## **6 STANDARD OF WORK**

6.1 All Workers are deemed to be under the exclusive direction, supervision and control of the Hirer from the time the Worker first reports at the Hirer's premises to take up duties and for the duration of the Assignment (notwithstanding the fact that the Worker may be an employee of The Education Network).

6.2 During the Assignment the Hirer shall:-

- 6.2.1 specify the manner in which the Worker carries out the work; and
- 6.2.2 undertake to supervise the Worker sufficiently to ensure the Hirer's satisfaction with the standard of work.

## **7 INFORMATION TO BE PROVIDED BY THE HIRER**

7.1 Before The Education Network will supply a Worker to the Hirer, the Hirer must provide The Education Network with the following information:-

- 7.1.1 confirmation of the identity of the Hirer and the nature of the Hirer's business
- 7.1.2 the date on which the Hirer wants the Worker to start work and the duration or likely duration of the Assignment
- 7.1.3 the number of hours per week which the Hirer will require the Worker to work in order that The Education Network can comply with its duties under the Working Time Regulations 1998
- 7.1.4 the position, including the type of work the Worker will be required to do, and the location at which the Worker will be required to work
- 7.1.5 any risks to health and safety known to the Hirer and the steps taken by the Hirer to prevent or control such risks. The Hirer must carry out appropriate risk assessments and inform The Education Network of all known risks relevant to any Worker, site, equipment and working conditions relevant to the Assignment and the controls that have been put in place to prevent or control such risks.
- 7.1.6 the experience, training, qualifications and any authorisation which the Hirer considers necessary or the Worker requires to have by law or by the requirements of any professional body in order to carry out the Assignment.
- 7.1.7 Full and accurate information concerning the pay; the duration of working time; night work; rest periods; rest breaks and annual leave (as these terms are defined in the AWR) applicable to any worker or employee that would be recruited directly by the Hirer to do the same job as the Worker;
- 7.1.8 any expenses payable by or to the Worker.
- 7.1.9 any other information considered necessary by The Education Network in order to comply with all statutory requirements from time to time.

## **8 PERSONAL PROTECTIVE EQUIPMENT**

8.1 The Hirer shall provide such personal protective equipment and clothing necessary to ensure the health, safety and welfare of the Worker without charge to The Education Network or the Worker. In the event that The Education Network is required to provide any such protective clothing and/or equipment, The Education Network may charge the Hirer for the cost of providing such clothing and/or equipment.

## **9 TRANSFER FEE/EXTENSION OF HIRE PERIOD**

9.1 The transfer fee or extension to the hire period as set out in Clause 9.2 will apply in the following situations:-

- 9.1.1 the Worker is taken on directly or employed by the Hirer
- 9.1.2 the Worker is supplied to the Hirer by a different employment business or employment agency; or
- 9.1.3 the Hirer introduces the Worker to another person who employs or engages the Worker.

9.2 In the event that any of the three situations set out in Clause 9.1 arises either in the duration of the Assignment or the period of 8 weeks commencing on the day after the day on which the Worker last worked for the Hirer pursuant to being supplied by The Education Network or the period of 14 weeks commencing on the first day on which the Worker worked for the Hirer pursuant to the supply of that Worker by The Education Network (whichever of the periods ends later) then the Hirer must either (subject to electing upon giving 7 days notice):-

9.2.1 make payment to The Education Network of a Transfer Fee calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly, daily or part daily charges agreed pursuant to clause 3.1 multiplied by 200. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due;

9.2.2 or elect for an extension to the Assignment of 13 weeks during which The Education Network will continue to supply the Worker to the Hirer on terms no less favourable to the Hirer than those which applied immediately before The Education Network received notice from the Hirer that it wished to exercise its right under this Clause 9.2.2.

9.3 Where the Hirer does not give the notice referred to in 9.2 above before the Worker is engaged the parties agree that the Transfer Fee shall be due.

9.4 In determining for the purposes of Clause 9.2 the first day on which the Worker worked for the Hirer pursuant to the supply of that Worker to that Hirer, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which that Worker did not work for that Hirer pursuant to being supplied by The Education Network.

9.5 The three situations detailed in Clause 9.1 shall be deemed to have occurred when the Worker, where the Worker is an individual, carries out work under his or her own name or on behalf of any limited company or other legal entity which he or she controls or with which he or she is connected.

9.6 Where the Hirer elects to pay the introduction fee, payment of the introduction fee must be made not later than 28 days from the date of the invoice. The Education Network reserves the right to charge interest on any invoices unpaid after such date at a rate equal to 4% above the base rate of the Bank of Scotland from time to time being in force calculated on a daily basis. For the purposes of clause 9.1 "Hirer" shall include any Hirer Associated Company

## **10 LIABILITY**

10.1 Whilst every effort is made by The Education Network to ensure the reasonable standards of skill and reliability of the Worker provided to the Hirer and to provide the Worker in accordance with the assignment details and requirements of the Hirer, The Education Network shall not be liable for:-

- (a) any losses, damages, costs, expenses or delay arising directly or indirectly from The Education Network's failure to provide any Worker for all or part of the period of the assignment;
- (b) any losses, damages, costs, expenses or delay arising directly or indirectly from any act or omission whatsoever of the Worker.
- 10.2 Notwithstanding any other provision contained herein (save for death or personal injury) The Education Network's entire liability under these Terms shall not exceed the annual value of the fees received by it from the Hirer arising from The Education Network's provision of the Services pursuant to these Terms.
- 10.3 Save as expressly provided for under these Terms, The Education Network shall not be liable for any incidental, indirect, special, punitive or consequential loss or damage, including but not limited to any loss of business, revenue, profits, loss of or use of data, loss of savings or anticipated savings, loss of investment, loss of goodwill, loss of extra administrative cost whether or not foreseeable or cost of capital arising out of or in connection with the provision of the Services and/or these Terms.
- 11 INDEMNITY**
- 11.1 The Hirer shall indemnify and keep indemnified The Education Network on demand from and against any and all losses, claims, damages, costs (including legal costs on a full and unqualified indemnity basis) charges, expenses, liabilities or demands, proceedings and actions which The Education Network may sustain or incur or which may be brought or established against The Education Network by any person (including a Worker) arising out of or in relation to the supply (or attempted supply) of the Worker to the Hirer or the breach of any of these Terms by the Hirer. For the avoidance of doubt this includes any personal injury claims of whatsoever nature and shall also include any claim by any Worker against The Education Network arising out of any breach of the AWR.
- 11.2 Any exclusion or limitation clause or right of indemnity in these Terms shall inure not only to the benefit of The Education Network but also of its directors, servants and agents.
- 12 UNDERTAKINGS BY THE HIRER**
- 12.1 The Hirer undertakes to comply in all respects with all statutes, statutory instruments, codes of practice and other legal obligations and requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff in relation to any Worker assigned to the Hirer.
- 12.2 The Hirer undertakes, at all times, to comply in full with the requirements of the AWR and shall notify The Education Network immediately in the event that any Worker intimates a claim or a questionnaire under the AWR to the Hirer. Without prejudice to the terms of the indemnity under Clause 11.1 above in the event of any claim by any Worker under Regulations 5 and 6 of the AWR the Hirer shall provide, at its own cost, such reasonable assistance as The Education Network may require to assist in the defence of any such claim.
- 12.3 The Hirer undertakes to effect and maintain adequate levels of insurance cover in order to meet its obligations herein, including but not limited to Employer's Liability and Public Liability insurance cover.
- 12.4 The Hirer undertakes not to instruct any Worker to carry out duties outside the scope of the Assignment nor to carry out any duties for which particular skills and experience are required and which have not been previously specified to The Education Network. Where The Education Network provides its consent, such consent shall only be granted on the basis that the Hirer has in place appropriate insurance to the satisfaction of The Education Network and which has been endorsed for The Education Network's benefit.
- 12.5 The Hirer shall not give to the Worker any cash, cheque or other valuables without the prior written approval of The Education Network. In the event that The Education Network provide written approval under this sub-clause they shall not be responsible for any loss that the Hirer incurs by virtue of providing such cash, cheque or other valuables.
- 12.6 The Hirer shall notify The Education Network immediately in the event that a Worker fails to attend work when expected.
- 12.7 The Hirer shall notify the Health & Safety Executive under RIDDOR immediately in the event that the Worker is involved in any accident or sustains any injury whilst on Assignment to RIDDOR.
- 12.8 Where The Education Network supplies a Worker who is requested to drive a Hirer's vehicle, the Hirer shall check references of Temporary Drivers, and will examine driving licences and permits. Notwithstanding this the Hirer agrees to take direct responsibility for all statutory duties where applicable in respect of driving licence, maintenance and safety of vehicles, Health and Safety Regulations, and Road Traffic liability insurances: including but not limited to fully comprehensive insurance for the vehicle to be driven and its contents.
- 12.9 The Hirer shall immediately provide to The Education Network notification of any changes to the information which it has provided to The Education Network under clause 7 as soon as the Hirer becomes aware of any such changes.
- 12.10 Where any Worker has been provided to the Hirer or any Hirer Associated Company (whether by The Education Network or any other party) to carry out broadly the same role as required under the Assignment the Hirer shall immediately notify The Education Network of both that fact and the dates upon which any such Worker was so supplied.
- 12.11 The Hirer shall not give a Worker keys to their premises or key holder responsibilities without the prior written consent of The Education Network.
- 13 TERMINATION**
- 13.1 Either party may terminate an Assignment at any time without prior notice.
- 14 VARIATION TO TERMS**
- 14.1 Save in relation to the items specified in clause 14.2 any variation of these Terms must be agreed in writing by a Managing Director of The Education Network to be effective. In the event that a variation to these Terms is agreed, The Education Network will provide the Hirer with a new set of Terms setting out the details of the changes and stating the date on which the varied terms take effect within 7 working days of the date of agreement to the variation.
- 14.2 Any variation to the charges and any rebates or refunds will only be valid if previously agreed in writing by a manager of The Education Network.
- 15 LAW**
- 15.1 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.
- 16 FORCE MAJEURE**
- 16.1 Except as otherwise provided, neither party shall be obligated to perform hereunder and neither shall be deemed to be in breach if performance is prevented

by (i) fire, earthquake, flood, wind, typhoon, water, act of God, riot, civil commotion, or other matter or condition of like nature, or (ii) any law, ordinance, rule, regulation or order of any public, governmental or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

of any right or remedy prevent any further exercise of that right or remedy or the exercise of any other right or remedy.

We hereby acknowledge receipt of these Terms and Conditions of Business and agree to be bound by them.

#### **17 TRANSFER OF CONTRACT**

17.1 The Hirer or The Education Network shall not without the consent in writing of the other party assign or transfer the Contract or any part, share or interest therein. No instalment or other sum of money due payable under the Contract shall be payable to any other person than The Education Network.

#### **18 CONFIDENTIAL INFORMATION**

18.1 The Hirer agrees to treat the Contract as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to The Education Network technology, or other know-how, business plans or finances or any such information relating to a subsidiary, supplier, customer or client of The Education Network where the information was received during the period of the Contract and upon termination of the Contract for whatever reason the Hirer shall deliver up to The Education Network all working papers, computer disks and tapes or other material and copies provided to or prepared by the Hirer pursuant either to the Contract or to any previous obligation owed to The Education Network.

#### **19 PARTNERSHIP**

19.1 The provisions of the Contract shall not be deemed to constitute a partnership between the parties.

#### **20 ECONOMIC AND MONETARY UNION**

20.1 A decision by the United Kingdom to join or not to join the Economic and Monetary Union will not itself cause the Contract to be terminated or entitle one party unilaterally to vary or terminate it.

#### **21 THIRD PARTY RIGHTS**

21.1 No provision in the Contract is intended to or does confer upon any third party any benefit or right enforceable by the third party.

#### **22 DISPUTE RESOLUTION**

22.1 Any question or difference which may arise concerning the Terms will be dealt with as follows:

- (a) The first instance between the The Education Network Branch and the relevant Hirer;
- (b) If not resolved, the issue may be escalated to a Director of The Education Network and the relevant Hirers' Senior Representative;
- (c) If the issue cannot be resolved at either of the first two levels, the matter will be escalated to the Managing Director of The Education Network.

#### **23. SEVERABILITY**

23.1 If any term of the Contract is found to be illegal, invalid or unenforceable under any applicable law, such terms shall, insofar as it is severable from the remaining terms, be deemed omitted from the Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.

#### **24. WAIVER**

24.1 No failure to exercise, nor delay or omission by any party in exercising any right, power or remedy conferred on it under the Contract or provided by law shall affect that right or remedy; or operate as a waiver of it nor will any partial exercise by any party