

AGENCY CLIENT TERMS OF BUSINESS

We are EduStaff National Limited of 6th Floor, 4 Cam Road, Stratford, London, E15 2SN including, for the purposes of these Terms of Business, our branch offices and our subsidiary companies (as defined by s.1159 Companies Act 2006) or our associated bodies corporate (as defined by s.256 Companies Act 2006) (throughout “we”, “us”, “our” and “ours”).

You are the recipient of these Terms of Business and as such you and a Connected Person are our client for the purposes of these Terms of Business (throughout “you”, “your” and “yours”).

ACCEPTANCE - The terms in this document set out the arrangements and fees for our service, together with the information that we need to collect from you to enable us to provide our services and comply with applicable regulations. Once you have received this document, comprising this page and the pages that follow, any act by you of accepting or requesting services from us, or using in any way information from us relating to a Candidate, is deemed to be and shall constitute your acceptance of these Terms of Business, which, in consideration of the mutual benefits set out, then apply.

Fee Scale

For Permanent Placements and Engagements except where otherwise specified

Our fee, calculated subject to these terms and conditions, is 20% of the annual salary or a minimum of £4,500 whichever the greater.

Rebate Scale for Permanent Placements, subject to clause 4.5, is as follows

<u>Proportion of Fee</u>	<u>Week in which employment ends</u>	
(a) 80%	1-2	this means that if employment ends during the first two weeks 80% will be rebated
(b) 50%	3-6	this means that if employment ends during weeks 3-6 50% will be rebated
(c) 25%	7-12	this means that if employment ends during weeks 7-12 25% will be rebated

Week = week in which employment ends

Section 1 – definitions and meanings

Assignment	an Engagement in respect of which details have been negotiated and agreed through us in advance of commencement, being either a Permanent Placement, or a Temporary Placement NOTE: an Engagement which you do not agree with us in advance is not an Assignment
Candidate	any person, whether presenting as an individual, a contractor, an interim manager, whether self-employed or otherwise, and/or a limited company through which a person is offering services, or a supplier company in respect of whom or which, or in respect of whose skills or services, information is provided to you by us
Conduct Regulations	the Conduct of Employment Agencies and Employment Businesses Regulations 2003
Connected Person	a person with whom we conduct business, being (a) a subsidiary company (as defined by s.1159 Companies Act 2006) or associated bodies corporate (as defined by s.256 Companies Act 2006) of yours, or (b) a business (whether corporate or unincorporated) <ul style="list-style-type: none"> (i) which is a member of, director of, or partner in, your company or business, or (ii) of which you are a member, or director or partner, or (iii) for which either you or a representative of yours is authorised by you (whether expressly or impliedly) to undertake work (other than solely in a professional capacity), or (iv) which has a director or shareholder in common with you
Data Protection Laws	the EU Regulation 2016/679 (General Data Protection Regulation) and any data protection legislation applicable from time to time in the UK and use herein of ‘Personal Data’, ‘Controller’, and ‘Data Subject’ have the respective meanings defined therein
End User	any third party to whom you provide information concerning a Candidate following an Introduction and for whose benefit the Candidate provides any services, and any associate (as defined by s.435 Insolvency Act 1986) of that third party
Engagement	any engagement, arrangement or employment of any description (including as defined by s.13(1)(a) of the Employment Agencies Act 1973) under an Assignment or otherwise, whether direct or indirect, express or implied, including an Offer, under which a Candidate is due to provide any services for your benefit or to an End User

AGENCY CLIENT TERMS OF BUSINESS

including, but not limited in meaning to, an engagement or employment which is temporary or permanent in nature or through the intermediary of a limited company or by contract through a third party, the date of which shall be deemed to be the earlier of the date of an agreement to Engage or the date of commencement of any services under an Engagement, and “Engage” and “Engaged” shall have corresponding meaning

Expenses	any expenses you have agreed to pay
Fees	the payment due for the Services and ‘Fee’ shall have corresponding meaning
Fee Period	the longer of (a) any time after an Introduction where the Introduction was the effective cause of the Engagement, or (b) during the later of 9 months after (i) an Introduction relating to the Candidate, or (ii) the last day of the Assignment of the Candidate
Fee Scales	as set out on page 1 of these Terms of Business and references to the Fees described therein
Introduction	the provision of information by us or by a Candidate, whether or not such information includes the Candidate’s name, that enables you to identify a Candidate or relating to a Candidate already identified, including all negotiations between the Parties relating to a Candidate and ‘Introduce’ shall have corresponding meaning
Offer	an offer to Engage the Candidate communicated either by you or us at your request, and which is accepted by the Candidate
Party	you or us, together referred to as ‘Parties’
Payment Terms	the terms in Section 4
Placement	an Assignment where the Candidate is Engaged by you or an End User, whether part or full time, being either (i) a ‘Temporary Placement’, namely an engagement that has a proposed limitation on the period of hire identified (ii) a ‘Permanent Placement’, namely any engagement that is not a Temporary Placement
Privacy Notice	our privacy notice made pursuant to the Data Protection Laws from time to time [which can be found at www.edustaff.co.uk
Remuneration	any payment for the services of the Candidate under an Engagement calculated in accordance with section 4
Requirement	a request from you in any form (whether oral or otherwise) for our Services
Requirement Information	sufficient information to enable us to seek a Candidate including <ul style="list-style-type: none"> • the position to be filled and date for commencement • nature of the work and/or position required • working conditions and location • proposed salary and/or other payment terms • issues relating to health and safety relevant to any Candidate • minimum experience, certifications and qualifications required for the position • confirmation that you have all necessary licences and consents required for the proposed work • any other information which may be relevant to the decision of a Candidate to accept the position
Services	the location of, and/or introduction of Candidates, to you in accordance with your Requirements and/or any additional specific service (‘Supplemental Service’) which may be ancillary thereto
Special Terms	special terms agreed to apply to a specific Requirement
Terms of Business	this document comprising terms and conditions upon which we provide the Services

Section 2 - general obligations, information and introductions

- 2.0 These Terms of Business apply to all dealings between you and us relating to our Services and please note that they do not apply to the supply of individuals or contractors, for which please ask us for applicable alternative terms.
- 2.1 We agree to use our reasonable endeavours to provide the Services.
- 2.2 You agree to accept our Services and you acknowledge and agree
- (a) the Conduct Regulations and other statutory obligations require us to provide specific information to each Candidate and to other authorities in relation to any Requirement; accordingly to enable us to comply with our obligations and to help us introduce a suitable candidate you must
- (i) at the same time as a Requirement or as soon as possible thereafter provide the Requirement Information to us together with answers to any additional questions we may raise, and
- (ii) prior to commencement of, and during each Assignment, promptly inform us of any additional or changed information

AGENCY CLIENT TERMS OF BUSINESS

- (b) regardless of our statutory obligations and any references or information that we may provide, in order to achieve a satisfactory outcome, to check that the Candidate is suitable for your purposes and in particular
 - (i) explain your requirements to the Candidate promptly on commencement of the Engagement if you have not already done so
 - (ii) check that you are satisfied with the information and confirmations we have provided to you
 - (iii) take up your own references for the Candidate, verify any curriculum vitae provided, and ensure that the Candidate has any necessary permit or authority to work for you
 - (c) where you need authorisation or a licence to be able to engage a Candidate or allow the Candidate to work in the position you seek to fill, your request for us to seek a Candidate shall be deemed to be your confirmation that you have all necessary authorisations and licences unless you inform us otherwise, for example where you are in the process of applying for the required authorisation
 - (d) to ensure that all information you provide to us is full and accurate
 - (e) to keep us promptly informed of your intentions in relation to an Engagement of a Candidate throughout the Fee Period
 - (f) it is your sole responsibility for checking whether a Candidate has been previously introduced by another party; accordingly you also agree
 - (i) if we Introduce a Candidate to you but you have previous knowledge of the Candidate through any means, including social media, such that you believe that we are not entitled to a Fee it is important that you notify us in writing within 3 working days of the earliest date upon which you are able to identify the Candidate from information provided under the Introduction, together with full supporting documentary evidence
 - (ii) that in the absence of your valid notification to us under clause 2.2(f)(i) coupled with full supporting documentary evidence, an Engagement by you shall be deemed to have resulted from and be effectively caused by our Introduction and you waive the right to rely on such previous knowledge as a reason for non-payment
 - (iii) our entitlement to the Fee shall not be affected by any arrangement for a fee or otherwise that you may have with a third party relating to the same Candidate
 - (g) even though Candidates Introduced to you may be for a specific position, you may Engage a Candidate for any purpose, job or role; accordingly and for the avoidance of doubt we are entitled to a Fee for an Introduction in the circumstances of any Engagement of the relevant Candidate regardless of the job description for which the Candidate may be Engaged, whether the position sought to be filled by you has changed, or the role or tasks to be performed or undertaken by the Candidate are different from those provided to us in the Requirement Information
 - (h) wherever there is an Engagement for which, regardless of the circumstances, we believe (whether reasonably or otherwise) we are due a Fee you shall within 7 days of our written request provide to us information to enable us to identify the Remuneration and other material terms of the Engagement as we may request.
- 2.3 Wherever there is an Assignment we shall endeavour to advise you of the details as soon as possible unless, in the case of a Permanent Placement, you have concluded negotiations with the Candidate direct. For the avoidance of doubt, whilst we may advise you of the details applicable to the Placement of a Candidate, those details are relevant only to record rates agreed for the purposes of our Fee and the other purposes for your use of the Candidate and not further or otherwise.
- 2.4 An Introduction entitling us to our Fee in the event of your Engagement shall be deemed to exist notwithstanding that you, or a person at your request, may have initially introduced the Candidate to us for the provision of all or part of our Services to you.

Section 3 – fees

- 3.0 You agree to pay our Fees and any Expenses in accordance with the Payment Terms without any deduction, set off or counterclaim.
- 3.1 Our Fees are due and payable by you whenever you use a Candidate, an Offer is made, or we provide a Supplemental Service in respect of which we have agreed a Fee. For the purposes of these Terms of Business you ‘use a Candidate’ whenever there is an Engagement within the Fee Period, where
- (a) you Engage a Candidate (whether or not as an Assignment)
 - (b) you introduce (by providing information or otherwise) a Candidate to an End User which enters into an Engagement of the Candidate.
- 3.2 The calculation of our Fees for Engagements and Assignments are set out in the Fee Scales.
- 3.3 In the case of a Temporary Placement that is agreed to be for a period of less than one year (whether or not intended to be renewed)
- .

Section 4 – payment terms, invoicing, rebates

- 4.0 The Payment Terms are as follows:

AGENCY CLIENT TERMS OF BUSINESS

- (a) Fees for all Services and Expenses are payable within 7 days from the date of our invoice unless otherwise agreed in writing signed by a director of ours
- (b) in the case of an Engagement where there is no Assignment, Fees are payable within 7 days of commencement of the Engagement, the sum due in respect of the Fee being a debt due to us whether or not we have submitted an invoice
- (c) interest is due on any overdue sum calculated at the rate of 2% per month.
- 4.1 No fee shall be chargeable for an Offer if, prior to commencement of a contract relating to the Offer, you withdraw the Offer for the reason that you have since come into possession of information which you have provided to us that the Candidate is wholly unsuitable for the position offered by you.
- 4.2 We may issue an invoice to you
 - (a) except in the case of an Offer, for the relevant fee under each Engagement upon, or as soon as is appropriate after the commencement of the Engagement, or at any times or intervals agreed for payment in an Assignment
 - (b) for a Supplemental Service on delivery of the Service concerned unless otherwise agreed
 - (c) in the case of an Offer, at any time after the Offer.
- 4.3 All Fees are subject to value added tax ('VAT') which shall be charged in addition and, for the purpose of calculating our Fee, Remuneration in foreign currency will be calculated at the Bank of England Sterling exchange rate applicable on the date of our invoice.
- 4.4 If your employment of a Candidate ends within the period referred to in the Rebate Scales set out in the Fee Scales, we shall repay a proportion of our Fee accordance with that Rebate Scale provided the following conditions ('Rebate Conditions') apply:
 - (a) the arrangement is a Permanent Placement agreed with us, and
 - (b) you have not previously used the Candidate in any capacity, whether working direct for you, by supply through us, or otherwise, and
 - (c) the employment ends by reason of the fact that the Candidate is wholly unsuitable for the position taken up by the Candidate; for the avoidance of doubt in a redundancy situation a Candidate will not be considered wholly unsuitable for the position, and
 - (d) you have provided us with full and correct information as to the position sought to be filled in accordance with the Requirement Information in relation to the Candidate, and the position is as described, and
 - (e) you have first paid the relevant Fee within the Payment Terms, for the avoidance of doubt time being of the essence, and
 - (f) you have notified us in writing of the fact, and date, of termination no later than 3 working days after the earlier of the date of notice of termination given by either party or the date the employment ends, and
 - (g) your notification under clause 4.5(f) contains confirmation that you wish us to seek an alternative candidate
- 4.5 It is a condition of making a Rebate that you agree to promptly repay it
 - (a) if it is not properly due to you, or
 - (b) if you re-Engage the relevant Candidate within 12 months of the termination which entitled you to the Rebate, and your acceptance of a Rebate shall be deemed to be your agreement to promptly make the repayment together with interest under clause 4.0(c) from the date the Rebate was made.

Section 5 – remuneration

- 5.0 Remuneration referred to in the Fee Scales, for the purpose of our Fee, is calculated as follows:
 - (a) subject to clause 5.0(b), the total proposed or projected sum (whichever is higher) payable by you or an End User for the benefit of the services of a Candidate under an Engagement for one calendar year from the earlier of the proposed or actual commencement of the service, together with the value attributable by HM Revenue & Customs, or for the avoidance of doubt, would be attributed by HM Revenue & Customs were the benefit subject to tax in the UK, of all taxable benefits provided under the Engagement, such value in respect of any motor vehicle being not less than £7,500
 - (b) calculation is on an annualised basis, so that the same payment rate or charge applicable during the period of an Engagement which is projected to be for less than a full calendar year shall be deemed to apply as if the Engagement were to continue for a full year, whether or not the Engagement continues for a full year
 - (c) if you do not inform us of the relevant Remuneration within 14 days of our enquiry, or by any later date we raise an invoice, the Remuneration shall be deemed to be an amount calculated on the basis of the higher of:
 - (i) the rate payable under the last previous Assignment, or
 - (ii) the highest amount or rate indicated by either you or us as payable for the services sought by you, or
 - (iii) the highest amount achievable in the market place for a person of similar experience to work in the position that has been filled - such amount is to be determined by us and based upon appropriate evidence.
- 5.1 Wherever there is an increase in Remuneration within 12 months of commencement of a Permanent Placement, whether or not due to increased hours, we shall be entitled to raise a further invoice for our fee reflecting the increase.
- 5.2 In the case of an Offer, Remuneration shall be calculated on the projected sum contained within the Offer.

AGENCY CLIENT TERMS OF BUSINESS

Section 6 – confidentiality & non-solicitation

- 6.0 You shall keep any information comprising an Introduction confidential and not use it for any purpose other than that disclosed by you to us at the time the information was requested; in particular you shall not directly or indirectly induce nor seek to induce a Candidate that is engaged by contract to us to terminate such contract for any reason and it is agreed that should you be in breach of this provision you shall be liable to us for liquidated damages for each breach in the sum of £10,000 being estimated damages that you agree are reasonable for our loss.
- 6.1 Subject to clause 6.2 no Party shall divulge to any other person, or use for its own benefit, any information capable of being confidential relating to the affairs or business or business methods, or confidential information, received from the other, except that which is in the public domain or is trivial or obvious or authorised to be released or required by Court Order to be disclosed.
- 6.2 No Party ('the First Party') shall, for the duration of these Terms of Business or for a period of 12 months following the termination of an Assignment, directly or indirectly solicit or entice into their employment any person employed by the other party ('the Second Party') with whom the First Party has had any dealings arising from these Terms of Business, without the Second Party's prior written consent.

Section 7 – data protection

- 7.0 You acknowledge and agree the following provisions of this clause in relation to data protection.
- 7.1 Save where expressly agreed otherwise in writing, the capacity of each Party under this agreement shall be that of Data Controller, and each Party shall be responsible for its own compliance with the Data Protection Laws.
- 7.2 The Services we provide may involve the provision by us of Personal Data including information relating to Candidates, our staff or third parties with whom we have dealings in respect of our Services; this Personal Data may include CV's, information relating to suitability, qualifications and experience, work records and absence information, and may in some cases include sensitive Personal Data where we consider it necessary. This information is provided for the purposes of evaluating Candidate suitability, administering placements and compliance with our obligations.
- 7.3 You will hold any Personal Data we provide securely, and confidentially and shall not use it or any part of it for any unlawful purpose, nor any purpose unrelated to the provision by us of our Services, and specifically, you shall not
- (i) provide the Personal Data to any person other than the person to whom we have submitted the Personal Data in the first place
 - (ii) include the Personal Data in any data or subsets of Personal Data nor use it for any marketing, advertising or other promotional purpose.
- 7.4 The information you have provided to us, including Personal Data, may be disclosed to third parties involved in our Introduction of Candidates to you with whom we may deal, and to Candidates and others with whom we deal, in order to comply with regulatory obligations and to meet our practical and legitimate interest in providing a professional service.
- 7.5 You shall co-operate with us in the event of any request by a Data Subject to enforce any rights under the Data Protection Laws, any complaint, or investigation by the Information Commissioner's Office or any other regulatory body or supervisory authority.
- 7.6 You warrant that
- (a) you will at all times comply with applicable Data Protection Laws in respect of any Personal Data provided by us to you
 - (b) you have appropriate technical and organisational measures within your organisation, including but not limited to measures which protect against the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data
 - (c) any Personal Data you provide to us will be lawfully obtained, compliant with the Data Protection Laws
 - (d) you have drawn the attention of any staff deployed by you to interface with us to our Privacy Notice.
- 7.7 The restrictions within clause 7.3 shall cease to apply to Personal Data processed in relation to a relevant Candidate following your employment of that Candidate.

Section 8 – liability

- 8.0 You shall at all times comply with all applicable laws and regulations relevant to your relationship with us or a Candidate, including but not limited to the Equality Act 2010 and the Data Protection Laws and you agree that you shall not take any action which would cause us to be in breach of our obligations under any applicable legislation.
- 8.1 By reason of your agreement to clause 2.2 we shall not be liable for any loss or damage arising out of any representation, including any mistake or misrepresentation, made by us in good faith that may have induced you to accept an Assignment, or for any breach of contract, negligence or tort of the Candidate.
- 8.2 Neither we nor our staff shall be liable to you for any loss, damage, delay or compensation of any kind whether in contract or tort, or for breach of the Conduct Regulations, or Data Protection Laws by any person other than us, which may arise out of these Terms of Business or an Assignment, save to the extent that exclusion of liability is prohibited by law.
- 8.3 Without prejudice to clause 8.1 and 8.2, other than where liability cannot be limited by law, our liability shall in any event, be in respect of direct losses only, and shall not exceed £1 million in any case, and be limited to the lower of repayment of our Fee, or £10,000.

AGENCY CLIENT TERMS OF BUSINESS

- 8.4 You shall indemnify us and keep us fully indemnified against any claims or demands including costs of dealing with the same
- (a) arising from incorrect or incomplete information provided by you to us, including a failure to provide us with any information as requested by us, or required by statute, and brought or made by a Candidate or any other business with which we have been dealing in relation to a Requirement, or any government or regulatory body
 - (b) arising out of any breach of these Terms of Business
 - (c) brought or made by you in relation to any matter under clause 8.1.
- 8.5 You agree to pay our costs reasonably incurred related to recovery of any Fee which is properly due from you but unpaid.
- 8.6 You agree that the liability terms and limits set out herein are reasonable.

Section 9 – other terms

- 9.0 An Engagement during Fee Period (b) as defined is deemed to be as a result of the relevant Introduction regardless of any information relating to the Candidate you may have received from any third party unless you have correctly notified us in accordance with clause 2.2(f)(i); accordingly, and for the avoidance of doubt, there is no implied term that an Introduction must be the effective cause of an Engagement.
- 9.1 Our entitlement to a Fee and the provisions herein survive the cessation of our Services for any reason
- 9.2 You are solely responsible for
- (a) paying all Candidates, and
 - (b) complying with all contractual and regulatory matters including health and safety relevant to a Candidate.
- 9.3 Unless you have notified us otherwise prior to the commencement of an Assignment, you warrant that there are no circumstances relevant to the work, or any aspect of an Assignment, which may result in the Candidate suffering a detriment of any kind.
- 9.4 Whilst at all times we shall act in good faith we give no guarantee or warranty that we will be able to locate any suitable Candidate, or that any Candidate we Introduce is suitable for your purposes at any time.
- 9.5 We are authorised by you to advertise in any medium we deem appropriate to source Candidates where you have issued a Requirement to us.
- 9.6 For the avoidance of doubt
- (a) as any Engagement is direct and not a supply by us, you are solely responsible for any compliance with legislation or tax requirements that may apply to your Engagement of, and relationship with, the Candidate
 - (b) terms, including specific fees, that relate to a specific Introduction or Assignment vary terms only to the extent specified relevant to that Assignment and do not apply further or otherwise.

Section 10 – general terms

- 10.0 These terms apply to any request you make of us for the Services described herein and are separate and distinct from any terms that may apply to any other business we conduct.
- 10.1 Where times are referred to herein such times are of the essence.
- 10.2 Other than for third party rights specifically conferred in or under this Agreement, the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 10.3 Any notice under these Terms of Business shall be in writing and sent to the addressee at the last known address by first class post, fax or to a default email address specified by us for the purpose. Where no default email address is specified by us you may not provide notice to us by email. Notice shall be deemed to have been received, in the case of post on the postal delivery date following the date of posting, in the case of fax on the date of transmission, and in the case of email on the date of acknowledgement of receipt.
- 10.4 The definitions and meanings herein apply throughout; words importing one gender include all other genders and words importing the singular include the plural and vice versa; headings are for guidance purposes only; each portion of these Terms of Business, defined by punctuation, paragraphs, sections or numbering, is separate, distinct and severable and to give meaning to the intention herein the Court may modify any portion that may otherwise be void; subject thereto, any void portion may be severed and the remaining provisions shall continue in full force and effect.
- 10.5 Any reference to a statute regulation or statutory provision shall include reference to any amendment thereto and to any subordinate legislation or modification thereto at the relevant time.
- 10.6 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.7 Save for any Special Terms, and subject to clause 9.6(b), these Terms of Business comprise the sole and entire agreement between you and us relating to the business described, supersede any previous terms issued by us, and override any terms proposed by you, and you acknowledge that you have not relied on any representations made by us that are not set out in these terms.
- 10.8 These Terms of Business may not be varied except

AGENCY CLIENT TERMS OF BUSINESS

- (a) by us in providing you with an updated version of these Terms of Business, which will be deemed to apply unless you notify us in writing that you do not accept the updated version within 7 days of receipt of the notice
 - (b) by agreement (whether orally or otherwise) and confirmed in writing signed by a director of ours; any terms provided by you to us and included within any request for services shall not apply unless we expressly agree the same in writing signed by a director of ours and no other action by us shall imply acceptance by us of any such terms; no notice of termination by either party shall have any effect other than to end the provision of our Services.
- 10.9 You are not entitled to assign these Terms of Business to any other party without our express authority to do so, but we may assign these Terms of Business upon giving notice to you, and we may assign or subcontract elements of Terms of Business, including debt, payment or invoicing arrangements without any requirement for formal notice.
- 10.10 The laws of England and Wales govern this Agreement and the English Courts shall have sole jurisdiction.