

**TERMS OF BUSINESS – SUPPLY OF TEMPORARY WORKERS**

**1. DEFINITIONS**

1.1 In these Terms of Business ("Terms"), the following definitions apply:

"Agency Worker" means a Temporary Worker who is an agency worker within the meaning of the AWR and who is employed by an Intermediary under a contract of service;

"Appointment" means the engagement, employment or use of the Temporary Worker by the Client (or any third party to whom the Applicant has been introduced by the Client) on any basis whatsoever and whether directly or indirectly. Appoint, Appoints and Appointed shall be construed accordingly;

"Assignment" means the temporary position or role which the Temporary Worker carries out for the Client;

"Assignment Schedule" means the document confirming details of the Assignment which is issued to the Client by BSR Health;

"AWR" means the Agency Workers Regulations 2010;

"Charges" means the charges of BSR Health for the supply of the Temporary Worker including the Temporary Worker's hourly rate, BSR Health's margin and, in respect of an Agency Worker, any Employer's National Insurance contributions, pension contributions, holiday pay and additional monies due pursuant to the AWR;

"Client" means the business to which the Temporary Worker is introduced or supplied by BSR Health and, where relevant, includes (i) any holding company or subsidiary of the Client (as defined in Section 1159 of the Companies Act 2006) or any associated company of the Client (as defined in Section 416 of the Income and Corporation Taxes Act 1988 ("ICTA"));

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

"Consultancy" means a limited company, engaged by BSR Health under a contract for services to provide the Services to the Client and through which the Services will be provided by a director, employee or subcontractor;

"Data" means personal data and special/sensitive personal data within the meaning of the Data Protection Legislation;

"Data Protection Legislation" means (i) the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

"Extended Hire Period" means an additional period of 20 weeks for which the Client wishes the Temporary Worker to be supplied for beyond the duration of the original Assignment or series of Assignments;

"BSR Health" means BSR Health Recruitment Limited, a company incorporated in England and Wales under company number 13419645 whose registered office is at 29 Carlton Crescent, Southampton SO15 2EW;

"Intermediary" means a third-party company which is engaged by BSR Health to supply an Agency Worker for an Assignment;

"Introduction" means (i) the provision by BSR Health to the Client of any information which expressly or impliedly identifies a Temporary Worker with a view to arranging an Appointment (ii) the arrangement of an interview or meeting between the Client and a Temporary Worker, whether in person or by telephone, web-conference or any other means and (iii) the supply of a Temporary Worker to the Client; Introduce, Introduces and Introduced shall be construed accordingly;

"Relevant Period" means the later of (i) the period of 8 weeks commencing on the day after the Temporary Worker last worked for the Client during an Assignment or (ii) the period of 14 weeks commencing on the first day on which the Temporary Worker worked for the Client during an Assignment but, in determining the first day on which the Temporary Worker worked for the Client, a prior Assignment shall be disregarded where more than 42 days have passed between Assignments;

"Restricted Period" means whichever period ends the latest of (i) six months from the end of the Assignment or (ii) twelve months from the most recent Introduction of the Temporary Worker to the Client;

"Remuneration" means (i) the gross annualised remuneration package payable to the Temporary Worker by the Client including, without limitation, basic salary, guaranteed and estimated bonuses and commission, allowances and all other taxable and non-taxable emoluments, £5,000 shall be added in respect of any company vehicle provided to the Temporary Worker or (ii) if the Temporary Worker is Appointed on a self-employed basis or via a personal services company or any other corporate entity, the total estimated annual charges payable to the Temporary Worker by the Client;

"Services" means the work to be carried out by the Temporary Worker during the course of the Assignment; and

"Temporary Worker" means the person, firm or corporate body (including an umbrella company) introduced or supplied to the Client by BSR Health and, save where otherwise indicated, includes a Consultancy and an Agency Worker; and

"Transfer Fee" means the fee payable by the Client pursuant to clause 8.1.

1.2 Unless the context requires otherwise, references to the singular include the plural.

1.3 A person includes a natural person, firm, corporate or unincorporated body (whether or not having a separate legal personality).

1.4 Any phrase introduced by the words including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those words.

1.5 A reference to a statute or statutory provision is reference to such statute or statutory provision as amended or re-enacted.

1.6 The headings in these Terms are for convenience only and do not affect their interpretation.

**2. THE CONTRACT**

2.1 These Terms, together with the Assignment Schedule, comprise the entire agreement between BSR Health and the Client for the supply of a Temporary Worker to the Client to the exclusion of any alternative terms which are proposed by the Client. In the event of any conflict or inconsistency between the documents, the Assignment Schedule shall take priority.

2.2 These Terms shall be deemed to have been accepted by the Client upon signing them or otherwise expressly indicating their acceptance in writing, instructing BSR Health to supply a Temporary Worker or Appointing the Temporary Worker, whichever occurs first.

2.3 The Client shall not rely on any statement, promise or representation made or given by or on behalf of BSR Health which is not set out in these Terms.

2.4 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between BSR Health (acting by its Managing Director) and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.5 For the purposes of the Conduct Regulations, BSR Health shall act as an employment business when introducing or supplying a Temporary Worker to the Client.

2.6 Unless BSR Health notifies the Client that a Temporary Worker has opted-out of the Conduct Regulations, the Conduct Regulations shall apply to any Assignment carried out by a Temporary Worker.

**3. CLIENT OBLIGATIONS**

3.1 Where the Conduct Regulations apply to an Assignment, the Client shall provide to BSR Health all such information regarding the Assignment as is specified in Regulation 18 of the Conduct Regulations.

3.2 The Client will assist BSR Health in complying with BSR Health's duties under the Working Time Regulations 1998 (as amended) by supplying any relevant information about the Assignment requested by BSR Health and the Client will not do anything to cause BSR Health to be in breach of its obligations under these Regulations.

3.3 The Client will comply and will assist BSR Health with complying with its obligations under the AWR by, without limitation:

3.3.1 providing the Agency Worker with access to collective facilities and amenities and information about permanent employment opportunities with the Client;

3.3.2 providing information to BSR Health about any previous assignment for which the Agency Worker has been supplied by any other employment business;

3.3.3 where relevant, providing written details of the relevant terms and conditions which apply to any actual or hypothetical comparator to the Agency Worker together with any amendments to such terms and conditions where appropriate;

3.3.4 co-operating with BSR Health in responding to or assisting BSR Health with responding to any query or complaint made under the AWR in a timely manner;

3.3.5 permitting a pregnant Agency Worker to attend ante-natal appointments, with pay, during working time after the 12-week qualifying period;

3.3.6 carrying out a risk assessment in respect of any pregnant Agency Worker and making such adjustments to the Assignment as are necessary to protect the Agency Worker's health and wellbeing or, where necessary, identifying a suitable alternative Assignment within the Client's organisation for the Agency Worker to perform; and

3.3.7 after the 12 week qualifying period under the AWR, paying a proportional increase in the hourly charges for the Agency Worker where necessary, together with any other emoluments to which the Agency Worker is entitled.

3.4 The Client shall advise BSR Health of any special health and safety matters about which BSR Health is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment.

3.5 The Client will also comply in all respects with all statutory provisions as are in force from time to time including, without limitation, the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other relevant by-laws, codes of practice and legal requirements.

3.6 If the Temporary Worker is injured while on Assignment, the Client shall keep a record of such injury and, where appropriate, shall notify the HSE under RIDDOR. In either case, the Client shall provide copies of any relevant documents relating to such injury to BSR Health.

3.7 Unless otherwise agreed by BSR Health in writing, the Client must ensure that the Temporary Worker is covered by either the Client's insurance policies or the Temporary Worker's own insurance policies for the duration of the Assignment.

3.8 Where BSR Health supplies a Temporary Worker to the Client who will be required to drive a vehicle during the course of their Assignment, the Client must check the Temporary Worker's driving licence and permits to ensure that the Client is satisfied that the Temporary Worker is qualified to drive the relevant vehicle. The Client shall be entirely responsible for the maintenance and safety of any vehicle to be driven by the Temporary Worker and shall ensure that the Temporary Worker is covered by comprehensive vehicle insurance at all times.

3.9 The Client shall not instruct any Temporary Worker to carry out any duties which are outside the scope of the agreed Assignment without the consent of BSR Health.

- 3.10 BSR Health shall not be liable for any losses suffered or incurred by the Client as a result of the Client providing any property or equipment to the Temporary Worker during an Assignment.
- 3.11 The Client must not request the supply of a Temporary Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 3.12 The Client must notify BSR Health forthwith if it is aware of any reason why it would be detrimental to the interests of the Temporary Worker to carry out the Assignment.
- 4. PROVISION OF INFORMATION**
- 4.1 Where the Conduct Regulations apply to an Assignment, BSR Health shall provide to the Client all such information as is specified in Regulation 21 of the Conduct Regulations.
- 4.2 BSR Health shall use reasonable endeavours to provide an Assignment Schedule to the Client on commencement of the Assignment or as soon as possible thereafter.
- 5. TIMESHEETS**
- 5.1 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 Client shall sign a timesheet in a format specified by BSR Health verifying the number of hours worked by the Temporary Worker during that week.
- 5.2 The Client is responsible for ensuring that the hours shown on the Temporary Worker's timesheet are correct and that only duly authorised employees sign the timesheet.
- 5.3 If the Client is unwilling to sign a timesheet because the Client disputes the hours claimed, the Client shall inform BSR Health within 48 hours and shall co-operate fully and in a timely manner with BSR Health to enable BSR Health to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the timesheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.
- 5.4 The Client acknowledges that BSR Health shall rely upon the Client's confirmation of the number of hours worked by the Temporary Worker. Accordingly, the Client shall not retrospectively adjust the number of hours which the Client has confirmed as having been worked by the Temporary Worker.
- 5.5 The Client shall not be entitled to decline to sign a timesheet on the basis that the Client is dissatisfied with the Services carried out by the Temporary Worker but may be entitled to terminate the Assignment in accordance with clause 9 below.
- 6. CHARGES**
- 6.1 The Client shall pay the Charges as agreed between the Client and BSR Health and confirmed in the Assignment Schedule.
- 6.2 BSR Health shall issue an invoice to the Client for the Charges each week and such invoice shall be payable within 14 days by electronic funds transfer. VAT shall be charged at the applicable rate on all charges and fees invoiced under these Terms.
- 6.3 BSR Health may vary the Charges, by giving written notice to the Client, in order to comply with the AWR or where a statutory amendment results in an increase in the cost to BSR Health of supplying the Temporary Worker to the Client.
- 6.4 There are no refunds or rebates payable in respect of the Charges and the Client shall pay the Charges without deduction or set off.
- 6.5 If an invoice is not paid within the agreed payment terms, BSR Health may:
- 6.5.1 Terminate the supply of Temporary Workers to the Client without notice;
- 6.5.2 Pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation in respect of such invoice;
- 6.5.3 Charge interest at the rate of 8% per annum above the base rate of the Bank of England from the due date until the date of payment; and
- 6.5.4 Refer the collection of such payment to its legal representatives and, in such circumstances, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by BSR Health in recovering payment from the Client.
- 7. RESPONSIBILITY FOR PAYMENTS**
- BSR Health is responsible for making payments to the Temporary Worker and, in respect of an Agency Worker, shall ensure that PAYE Income Tax and National Insurance Contributions are deducted pursuant to sections 44-47 of ITEPA 2003.
- 8. TRANSFER FEES**
- 8.1 Subject to clause 8.4, the Client shall pay a Transfer Fee ("Transfer Fee") if the Client Appoints a Temporary Worker Introduced by BSR Health (whether or not the Temporary Worker is Appointed by the Client to work at the same location as the original Assignment) or introduces the Temporary Worker to a third party and such introduction results in an Appointment of the Temporary Worker by the third party and:
- 8.1.1 where the Temporary Worker has not opted out of the Conduct Regulations, such Appointment takes place within the Relevant Period; or
- 8.1.2 where the Temporary Worker has opted out of the Conduct Regulations, such Appointment takes place within the Restricted Period.
- 8.2 The Transfer Fee shall be a sum equal to 25% of the Remuneration for the Appointment. If the actual Remuneration is not known to BSR Health or if it is impracticable to calculate the Remuneration, the Transfer Fee shall be 350 times the hourly charge rate at which the Temporary Worker was last supplied to the Client by BSR Health or which BSR Health reasonably considers to be the market rate for the role in which the Temporary Worker has been Appointed.
- 8.3 No refund of the Transfer Fee will be due if the Appointment subsequently terminates.
- 8.4 If the Temporary Worker has not opted out of the Conduct Regulations, the Client may, instead of paying the Transfer Fee, on giving one week's written notice to BSR Health, request that the Temporary Worker continues to provide the Services for the Extended Hire Period.
- 8.5 If the Client Appoints a Temporary Worker, the Client shall be entirely responsible for carrying out all necessary checks to ensure that they are satisfied with the suitability of the Temporary Worker including, without limitation, reference checks, verification of the Temporary Worker's qualifications and ensuring that the Temporary Worker has the right to work in the UK or such other jurisdiction in which the Temporary Worker is Appointed.
- 9. TERMINATION OF AN ASSIGNMENT**
- 9.1 Subject to clauses 9.2 and 9.3, either party may terminate an Assignment at any time by giving the notice specified in the Assignment Schedule or, if no period of notice is specified, at any time without notice. Such notice must be given in writing to the other party.
- 9.2 Irrespective of any notice period specified in the Assignment Schedule, either party may terminate an Assignment without notice if the other party has committed a serious or persistent breach of its obligations under these Terms, if the other party undergoes a change of control or becomes insolvent.
- 9.3 BSR Health may terminate an Assignment without notice if it becomes aware of any reason why the Temporary Worker is unsuitable to carry out the Assignment.
- 9.4 BSR Health shall not be liable if the Temporary Worker fails to give the agreed notice, if any, upon terminating the Assignment.
- 10. CONFIDENTIALITY AND DATA PROTECTION**
- 10.1 The Client shall treat as confidential all information relating to a Temporary Worker which is provided during the recruitment process and:
- 10.1.1 Must not use such information for any other purpose without the prior consent of BSR Health and the Temporary Worker; and
- 10.1.2. Must ensure that its employees, representatives and agents are all bound by written confidentiality obligations in respect of such information.
- 10.2 The Client acknowledges that, unless otherwise agreed between the parties in writing, the Client and BSR Health shall act as data controllers in respect of any Data relating to a Temporary Worker and shall control and process such Data in accordance with the Data Protection Legislation.
- 10.3 The Client must provide to the Temporary Worker the information specified under Article 14 of the GDPR and, if requested by the Client, BSR Health shall use reasonable endeavours to assist the Client in this regard.
- 10.4 Save to the extent that BSR Health is required to disclose such information to the Temporary Worker, BSR Health shall keep confidential any information provided by the Client for the purpose of complying with the AWR and shall not use it for any other purpose.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- BSR Health and the Client intend for all copyright, trade marks, database rights, patents, design rights and other intellectual property rights deriving from the Assignment to belong to the Client. BSR Health shall use reasonable endeavours to ensure that the Temporary Worker executes such documents and takes such action as is necessary to transfer any such intellectual property rights to the Client.
- 12. LIABILITY**
- 12.1 Subject to clause 12.2, the Client shall be responsible for the supervision, direction and control a Temporary Worker during the course of an Assignment and shall be responsible for any acts, errors or omissions of the Temporary Worker as if the Temporary Worker is an employee of the Client.
- 12.2 The Client acknowledges that a Consultancy may determine the manner in which they perform the Services and that they shall be expected to remedy any errors or deficiencies in the Services in their own time and at their own expense. Nothing in this clause make BSR Health responsible for the provision of the Services or permit the Client to withhold or set off any monies owing to BSR Health in relation to a Consultancy.
- 12.3 BSR Health does not exercise supervision, direction or control over a Temporary Worker at any time and shall not be liable for the errors or omissions of any Temporary Worker howsoever arising.
- 12.4 BSR Health shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise for failing to supply a Temporary Worker, for terminating an Assignment, for any defect or deficiency in the Services, for any claim for loss of profit or business, or for any indirect or consequential loss arising out of or in connection with the provision of services to the Client pursuant to these Terms.
- 12.5 Subject to clause 12.6, the aggregate liability of BSR Health to the Client in respect of any claim or series of claims arising out of or in connection with these Terms shall be limited to 10% of the Charges paid by the Client in relation to the relevant Temporary Worker in the three month period immediately prior to such claim arising or, if there was no supply of a Temporary Worker or if the claim does not relate to a specific Temporary Worker, the sum of £5,000.
- 12.6 BSR Health does not limit or exclude liability for death or personal injury arising from its own negligence or for any other claim which may not be limited or excluded by law.
- 12.7 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 12.8 Any claim which the Client may bring against BSR Health in relation to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.

12.9 The Client shall indemnify and keep indemnified BSR Health against all losses, damages or claims suffered or incurred by BSR Health as a result of any breach of contract, negligence (or any other tortious act) or breach of statutory duty by the Client.

**13. BRIBERY & ANTI-CORRUPTION**

13.1 The Client and BSR Health shall each:

13.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ; and

13.1.2 promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms.

**14. GENERAL**

14.1 If any part of these Terms is determined to be unenforceable to any extent, such part shall, to that extent, be severed from these Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

14.2 The Client shall not assign any of its rights or obligations under these Terms without the written consent of BSR Health.

14.3 The Client shall not deduct or set off any sum due to BSR Health under these Terms or any other contract entered into with BSR Health against any sum which is owed or which the Client alleges or claims is owed by BSR Health to the Client.

14.4 No failure or delay by a party in exercising any right or remedy under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 BSR Health and the Client do not intend these Terms to be enforceable by any third party.

14.6 These Terms shall be interpreted in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of these Terms.

Signed for and on behalf of BSR Health Recruitment Ltd

Name

Date

**I confirm I am authorised to agree these Terms on behalf of the Client.**

Signed for and on behalf of [xxxxx]

Name

Date