



On-Hire Agreement (Conditions of Assignment)

Business Solutions (WA)
Unit 5, 25-27 Sholl Street,
Mandurah
W.A. 6210

ABN: 64115964577

BETWEEN: Business Solutions (WA), Unit 5, 25/27 Sholl Street, Mandurah, W.A. 6210

ABN: 64 115 964 577

(“the Supplier”)

AND:

(“the Client”)

OPERATIVE

1. Definitions

1.1 **“assignment”** means the on-hire placement of one or more of our Workers to perform work at your premises or anywhere else as specified by you;

1.2 **“assignment description”** means the description of the work to be performed as set out in a document that specifies:

- (a) the services to be provided by each of our Workers;
- (b) the job description of each of our Workers;
- (c) the time and date upon which the assignment is to commence;
- (d) the time and date upon which the assignment is to terminate (if applicable);
- (e) the location(s) where the work is to be performed;

1.3 **“conditions of assignment”** mean the conditions as set out in this Agreement as may be varied and as they apply to assignments;

1.4 **“GST”** has the same meaning as in the GST Act;

1.5 **“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)*;

1.6 **“material degree”** means, when used with reference to any breach, act, error, or omission alleged to have caused or contributed to damage, loss or injury of any description, that it can be established by the evidence, on the balance of probabilities, that some causal connection or contribution exists between the relevant breach, act, error or omission and the relevant damage, loss or injury - provided that the causal connection or contribution is not **trifling**;

1.7 **“Worker”** means one of our employees or independent contractors;

1.8 **“related body corporate”** has the same meaning as in the *Corporations Act 2001 (Commonwealth)*;

1.9 **“relevant jurisdiction”** means the Australian state or territory jurisdiction in which work in accordance with the assignment is to be performed, as set out in the Schedule;

1.10 **“Schedule”** means the Schedule attached to this Agreement, which may be substituted from time to time;

- 1.11 **“taxable supply”** has the same meaning as in the GST Act;
- 1.12 **“tax invoice”** has the same meaning as in the GST Act;
- 1.13 **"us", "our" or "we"** refers to the supplier named in the Schedule;
- 1.14 **"you" or "your"** refers to the client named in the Schedule and, where the context indicates, a related body corporate of that client.
- 1.15 **“Engagement”** means the engagement, employment or use of the Applicant by the Client, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement; or any other engagement;

2. Application

- 2.1 The conditions of assignment become effective when you return a signed copy of the schedule, referring to this agreement, to us, or accept one of our Workers on assignment, after having received a copy of this document or reviewed it on our website.
- 2.2 This Agreement will continue to remain in force for all future Assignments, until it has been validly terminated (excepting that some clauses will survive the termination of this Agreement, where indicated).

3. Our Charges

- 3.1 Our charges will be based upon the number of hours our Workers work on assignment as recorded on the time sheets. You agree to pay all of the hours worked by our workers.
- 3.2 You agree to complete time sheets relating to our Workers accurately and to submit them to us promptly. If you do not complete the timesheets you agree to pay the hours that they have worked.
- 3.3 The hourly rates that we will charge you are set out in the Schedule.
- 3.4 We can unilaterally amend our hourly rates and any charges, to adjust for any increase in the labour cost component of our hourly rates, by sending to you an amended Schedule.
- 3.5 We may also amend our hourly rates and charges to adjust for any increase in our workers' compensation or other insurance premiums (or the costs associated with any similar arrangements) if we are reasonably satisfied that you have breached clause 6 below, and that your breach contributes directly or indirectly to such increase.
- 3.6 Any amended rates will apply from the date you receive the amended Schedule or from the date that the amended Schedule is stated to commence, whichever is the later.

4. Invoices

- 4.1 You will not pay any of our Workers directly for an assignment.
- 4.2 You will pay our invoices within 14 days of their presentation to you, in the manner described in the Schedule.
- 4.3 You will pay us interest at the rate (if any) stipulated in the Schedule on any payment not made as required by Clause 4.2.

5. Relationships

5.1 You acknowledge that we are not performing the services set out in the assignment description; but are instead the supplier of our Workers, at your request, to perform the work that you have described in the assignment description.

5.2 Whilst on an assignment, our Workers who are our employees, will be under your day-to-day control, and you will be responsible for their supervision in a manner consistent with our obligations to our employees.

5.3 We reserve all other rights to control the employment relationship of our Workers who are our employees, including the right to terminate the employment relationship for any reason that we think fit.

5.4 If you are not satisfied with one of our Workers and want a replacement, you will:

- (a) speak to us directly about replacement of our Worker;
- (b) not communicate anything to our Worker indicating that their on-hire assignment will be cancelled, or words to that effect.

5.5 If you are not satisfied with one of our Workers, but do not want our Worker replaced, you may speak to our Worker in order to give any reasonable instruction, provided that you contact us as soon as reasonably practicable to discuss the matter.

6. General matters and other responsibilities

6.1 You will:

- (a) provide us with full and accurate information about the job requirements relevant to the assignment by means of an assignment description;
- (b) not on-hire or resupply our Workers to any other person or organisation;
- (c) not allocate tasks or responsibilities to our Workers or require our Workers to perform or participate in work, other than in accordance with the relevant assignment description;
- (d) not request our Workers to perform or participate in any work or use any equipment with which our Workers, or their employees or agents, are unfamiliar or in respect of which they are unqualified or have not received adequate training;
- (e) supervise, instruct and direct our Workers properly at all times whilst they are on assignment to you;
- (f) supervise, instruct and direct your own employees and contractors properly at all times whilst our Workers are on assignment to you;
- (g) comply with your obligations to our Workers pursuant to relevant legislation, including legislation relating to workplace or occupational health and safety, discrimination and harassment.
- (h) maintain a safe work environment and safe systems of work;
- (i) establish safe work practices;
- (j) communicate safe work procedures to each of our Workers;

- (k) comply with safety standards;
- (l) maintain plant and equipment;
- (m) provide induction, training and safety consumables to our Workers where appropriate;
- (n) have a safety management plan in place in relation to the work our worker will be undertaking and ensure there is due diligence to see that the safety management plan is observed;
- (o) inform our Workers and us promptly of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard to our Workers;
- (p) comply with our reasonable requests to ensure the workplace health and safety of our Workers and to promptly rectify any deficiency in the provision of a safe work environment or safe systems of work, that in our reasonable opinion would pose a threat to the safety of one of our Workers or to any other person who may attend a place at which work is or may be performed by one of our Workers under the assignment;
- (q) ensure that our Workers will be covered by the following insurance policies, or other suitable and permissible statutory indemnity or self insurance arrangements, whilst working on assignment with you:
 - (i) public liability;
 - (ii) professional indemnity;
 - (iii) workers compensation under applicable legislation in the relevant jurisdiction if the legislation casts that responsibility on you;
 - (iv) compulsory third party motor vehicle insurance; and
 - (v) fully comprehensive motor vehicle insurance;
- (r) provide us with evidence of the currency and suitability of all insurances, statutory indemnity or self insurance arrangements that extend cover to our Workers;
- (s) notify us immediately of any event that may give rise to a claim under any insurance policy, statutory indemnity or self insurance arrangement that relates to our Workers whether such policy, indemnity or arrangement is held or established by you or by us;
- (t) report to us any performance issues in relation to our Workers in a written format, so that we can manage the feedback process with our Workers;
- (u) forward to us promptly a written notification of any workplace incident that may give rise to a claim by, against or involving our Workers;
- (v) ensure that our Workers are advised of free training available as well as other courses and conferences available to them;
- (w) abide by all federal and state laws that cast upon you any obligation to do, or refrain from doing, any thing, or to make or pay any payment, deduction, premium, levy, allowance, compensation, damages, interest or costs in respect of or in connection with the engagement of our Workers under these conditions of assignment or any work done by them whilst on assignment to you;

(x) maintain the confidentiality and privacy of information we provide to you about our Workers, whether written or verbal, including the fact that may be looking for work;

(y) pay any statutory charges, levies and taxes for which we may become liable in respect of performing our obligations under these conditions of assignment by reason of such statutory charges, levies or taxes being introduced after the acceptance of the offer to supply services;

6.2 You will assist where practicable, with the rehabilitation of our Workers by way of providing such Workers, through us, with suitable work (including light duties) once the Workers are able to return to work, if one of our Workers suffers an injury that is compensable under any law relating to workers' compensation or occupational health and safety.

6.3 In the event that the work contemplated by clause 6.2 is provided, and is of a lesser value, classification or remuneration than the work principally contracted for under the assignment, we will discount our charges by the percentage set out in the Schedule.

6.4 You acknowledge that as we are a member of the Recruitment & Consulting Services Association ("RCSA"), you will not require us to do or refrain from doing any act in breach of the RCSA's Code of Professional Practice or any other ethical requirement of the RCSA placed upon us.

6.5 You will abide by any obligations placed upon you by any competent body legislating, imposing, awarding or certifying any provision which would entitle one of our Workers to elect permanent employment with you, or that would compel you to offer such employment.

6.6 Transfer and introduction fees

Where there has been a supply

(a) In the event of the Engagement by the Client of a Temporary Worker supplied by the Supplier either (1) directly or (2) pursuant to being supplied by another supplier/employment business, during the Assignment or within whichever is the longer of either

- 14 weeks from the start of the first Assignment (the first Assignment being each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment); or
- 8 weeks from the day after the last day the Temporary Worker worked on the Assignment the Client shall be liable, to either an extended period of hire or a Transfer Fee the length or amount of which is to be agreed between the Supplier and the Client.

(b) The Client must give the Supplier 7 days' written notice in advance of the Engagement of whether it has elected to take the period of extended hire or to pay the Transfer Fee.

(c) If the client does not give such notice before the Temporary Worker is Engaged the parties agree that the Transfer Fee shall be due.

(d) If the parties do not agree a period of extended hire or a Transfer Fee in accordance with 6.6 (a) then the following shall be deemed to have been agreed:

-The amount of the Transfer fee shall be: \$5,000.00

6.7 Where there has been an introduction but no supply

(a) In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Supplier to the Client, but which leads to an Engagement by the Client of the Temporary Worker by the Client either (1) directly or (2) pursuant to being supplied by another supplier/employment business within 6 months of the date of the Introduction the Client shall be

liable, to either an extended period of hire or an Introduction Fee the length or amount of which is to be agreed between the Supplier and the Client.

(b) The Client must give the Supplier 10 days' written notice in advance of the Engagement of whether it has elected to take the period of extended hire or to pay the Introduction Fee.

(c) If the client does not give such notice before the Temporary Worker is Engaged the parties agree that the Introduction Fee shall be due.

(d) If the parties do not agree a period of extended hire or an Introduction Fee in accordance with 6.7 (a) then the following will have been deemed to have been agreed:

The amount of the Transfer fee shall be: \$5,000.00

7. Our responsibilities

7.1 We are responsible for the following in relation to our Workers whilst on assignment with you:

(a) the payment of all amounts due to our Workers under the terms of any relevant industrial instruments or contracts;

(b) if our Worker is an employee, the payment of leave entitlements, including but not limited to annual leave, sick leave, parental leave and long service leave;

(c) subject to the conditions of assignment, the deduction and/or remittance of all appropriate Federal and State taxes, including but not limited to income tax, fringe benefits tax and payroll tax, as may be required by law;

(d) workers' compensation under applicable legislation in the relevant jurisdiction, unless the legislation casts that responsibility on you;

(e) the payment of an amount as superannuation into a superannuation fund to avoid the imposition of any charge as may be required by law; and

(f) such other matters or things as may be negotiated between you and us and as are set out in the Schedule.

7.2 You are to provide us with access to the minutes of any committee, that is or may be established for consultation, or to exercise any statutory function or responsibility, with respect to occupational health and safety in any workplace in which one of our Workers is required to perform work, as we may request from you.

7.3 You agree, when we deem it appropriate, to allow us (or any of our Workers) the opportunity to be included as a representative to, member or observer of, or to consult with, or to participate in, any of the committees referred to in Clause 7.2.

8. Exclusions and Indemnity

8.1 We make no representation or guarantee that any of our Workers will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.

8.2 Our Workers may be replaced if their ability to function effectively and safely is limited, in which case we may replace them with another Worker.

8.3 Our Workers may refuse work if it reasonably appears that the working environment is or has become unsafe for any reason, including but not limited to you:

- (i) having not established safe work procedures;
- (ii) not complying with safety standards;
- (iii) not maintaining plant and equipment; or
- (iv) not complying with any relevant health or safety legislation or regulations;

8.4 We will not be liable to you in respect of any damage, loss or injury of whatsoever nature or kind, however caused, whether by our negligence or by the negligence of one of our Workers, their servants or agents or otherwise, which may be suffered or incurred, whether directly or indirectly, in respect of the services provided under the conditions of assignment.

8.5 You will indemnify us to the full extent of our liability for all damages, compensation (including damages and compensation for personal injury to or the death of one of our Workers or to any other person whatsoever), expenses, interest, and costs that we may have to pay to any person, as a result of any damage, loss or injury that has been caused by or contributed to, in any material degree, whether directly or indirectly, by:

- (a) a breach by you of any of your obligations under the conditions of assignment;
- (b) any act, error or omission of yours or your employees, agents or servants or your clients including, without limitation, any act, error or omission that may contravene the provisions of any equal opportunity legislation.

8.6 You will release us from all claims which you or any other person claiming through you now has or might have in the future, in respect of our liability for any damage, loss or injury to or death of our Workers, or any other person, to the extent that our liability is not required by law to be covered by insurance or other suitable and permissible statutory indemnity or self insurance arrangements;

8.7 Where any Act of Parliament implies in these conditions of assignment or in this Agreement any term and such a term voids or prohibits provisions in an agreement excluding, restricting or modifying the application of the provisions of that Act; or any liability for a breach of a condition or warranty implied by the provisions of any Act; such a term shall be deemed to be included in these conditions of assignment and this Agreement.

8.8 Our liability for any breach of such term contemplated by Clause 8.7 will be limited, however, at our option to any one or more of the following:

- (a) providing the services again; or
- (b) the payment of the cost of providing the services again.

9. Termination and breach

9.1 Subject to clause 9.2, an assignment will end at the date specified in the assignment description (if indicated).

9.2 We can terminate an assignment (and this Agreement) without notice and without incurring any liability to you for reasons that include, but are not limited to:

- (a) any breach of the conditions of assignment, or this Agreement; or
- (b) your failure to pay any amounts outstanding to us.

9.3 Either party can terminate an assignment and this Agreement by giving two (2) weeks' notice to the other party.

9.4 If you terminate this agreement in accordance with Clause 9.3, you will still be liable to pay to us all outstanding charges.

9.5 If you terminate an assignment other than as provided for in the conditions of assignment, you agree that you will indemnify us for any liability, damages, compensation, expenses, or costs that we may incur as a result of any proceedings which may be commenced or claims that may be made by one of our Workers arising out of, or in any way related to the termination of the assignment.

10. General matters:

10.1 Variation

(a) Any variation to this Agreement, these conditions of assignment, or to an assignment description must be in writing and agreed to by the parties, except in so far as the conditions of assignment or this Agreement expressly permit one party to vary the conditions of assignment or an assignment description unilaterally.

10.2 Waiver etc

(a) If we do not take action to enforce or require strict or prompt compliance with our obligations under this Agreement, or under the conditions of assignment, this will not affect or in any way limit our rights to exercise remedies we have in respect of such breaches.

10.3 GST

(a) If all or part of the consideration is or is deemed to be consideration for a taxable supply, the GST payable in respect of that consideration must be paid to us as an additional amount either on the due date for payment of the consideration or on the date on which we deliver a tax invoice in respect of the relevant taxable supply, whichever occurs last.

10.4 Severance

(a) If a provision of this Agreement, or of the conditions of assignment, is declared to be invalid, unenforceable, illegal or contrary to public policy, such invalidity, unenforceability or illegality will vitiate the provision only, and that provision will be deemed deleted or modified to the extent necessary to render the remainder of the provisions valid or enforceable, and will not otherwise in any way vitiate any other provision of this Agreement.

10.5 Jurisdiction

(a) This Agreement, and these conditions of assignment, are governed by and will take effect in accordance with the laws in force in the jurisdiction named in the schedule.

10.6 Entire agreement

(a) This Agreement and the conditions of assignment within it represent the entire agreement between you and us in relation to its subject matter.

(b) By signing the Schedule and thereby agreeing to this document you acknowledge that neither we nor anyone acting on our behalf have or has made any warranties or representations to you in relation to the matters covered by the Agreement which are not fully set out in the Agreement, and that before agreeing to this Agreement you have read it together with the Schedule and Schedule of fees and have understood them.