

## Terms and conditions of business for payroll services

### **1 Scope of these Terms and Conditions**

- 1.1 These Terms and Conditions shall apply to any Payroll Services proposed or undertaken by RW for the Client.
- 1.2 These Terms and Conditions shall not apply to the provision of temporary workers or contractors introduced to the Client by RW following either a search or selection process (i.e. where RW sources candidates and/or provides shortlisting), or to any associated services provided by RW.
- 1.3 These Terms and Conditions together with any documents referred to within them shall constitute the entire agreement between the Parties in relation to the Payroll Services provided by RW with respect to each Payroll Worker Introduced by the Client to the exclusion of all other agreements including any other terms and conditions of business or purchase conditions that the Client may attempt to impose in respect of the provision of the Payroll Services.
- 1.4 RW acts as an employment business for the purposes of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

### **2 Payroll Workers**

- 2.1 The Client shall Introduce each Payroll Worker to RW and provide RW with all necessary details in order to allow RW to engage the Payroll Worker for the particular Assignment, including identification details and the anticipated Pay Rate.
- 2.2 The Client warrants that prior to the commencement of the Assignment, it has confirmed; (i) the identity of each Payroll Worker; and (ii) that each Payroll Worker is willing to work on the Assignment through RW.
- 2.3 RW is not responsible for conducting any screening or other background checks on Payroll Workers, or to any information supplied with respect to Payroll Workers. RW makes no warranty and shall not be liable for any Losses suffered by the Client arising directly or indirectly from incorrect, misleading or misrepresented information provided by the Payroll Worker or third parties who verify any element of the information supplied relating to a Payroll Worker (for example, a referee, a former employer or government agency).
- 2.4 RW shall not be responsible for arranging work permits, insurance or other incidental requirements of the engagement of the Payroll Worker.
- 2.5 The Client acknowledges that the final decision to engage the Payroll Worker on an Assignment rests with the Client.
- 2.6 Where a Payroll Worker is engaged by RW on an Assignment after having been previously referred by another recruitment agency or third party, the Client shall indemnify RW against all Losses suffered or incurred by RW arising out of or in connection with any claims by such recruitment agency or third party resulting from or connected to the prior engagement of such Payroll Worker, including but not limited to claims relating to search or selection by that recruitment agency or third party.

### **3 The Assignment**

- 3.1 Payroll Workers are under the supervision, direction and control of the Client throughout the Assignment.
- 3.2 The Client shall maintain a written or electronic record of the times worked by each Payroll Worker (a "Timesheet"). The Timesheet shall be provided to RW periodically (which shall be weekly unless otherwise agreed). The approval of a Timesheet by the Client is irrevocable and shall entitle RW to the appropriate Fees. Any Timesheet which is undisputed yet unapproved for a period of 7 or more days shall be deemed approved.
- 3.3 RW shall be responsible for the payment of the contracted fees of the Payroll Worker and will be responsible for making all appropriate deductions for income tax and employers national insurance. It is acknowledged that the Client shall have no direct liability to the Payroll Worker in such regard.
- 3.4 RW will not be liable for any and all Losses incurred by the Client arising from the Payroll Worker's acts or omissions including their acts or omissions in the performance of their Assignment.
- 3.5 The Client shall indemnify RW against all Losses suffered or incurred by RW arising out of or in connection with:
  - (a) any allegation by a Payroll Worker that the Client has discriminated against them whilst on Assignment or during any selection process operated prior to the Assignment by the Client or its agents, or sub-contractors;
  - (b) any allegation by a Payroll Worker arising out of RW acting on the instructions by the Client to terminate the Assignment of the Payroll Worker provided always that RW shall inform the Client in the event that RW reasonably believes that following such instructions would be unlawful in the circumstances;
  - (c) a Payroll Worker claiming to be entitled to any payment or any other benefits accrued from before the commencement of the Payroll Worker's Assignment through RW (including but not limited to contractual and statutory benefits); and/or
  - (d) a Payroll Worker claiming to be entitled to any payment or any other benefits in addition to the Pay Rate for hours or days actually worked on the Assignment.
- 3.6 Effective 6 April 2021, the Client shall be responsible for determining whether an Assignment falls inside or outside of IR35. Where the Client has determined an Assignment to fall outside of IR35, RW will only engage the Payroll Worker through a personal services company without deducting tax and NICs (with the personal services company being responsible for making the appropriate deductions) if the Client has confirmed that the Assignment and the Payroll Worker are determined to fall outside of IR35. The Client must promptly notify RW if an Assignment changes to the extent that there is a risk that its status may change.
- 3.7 The Client will indemnify RW against any and all claims, demands, damages, fines, interest, charges, costs (including legal costs) and losses arising in connection with (i) the Client's assessment of the Payroll Worker's Assignment status; (ii) the Client's failure to assess a Payroll Worker's Assignment status; or (iii) the Client failing to notify RW of any changes to the role that impact the Payroll Worker's Assignment.

## **4 Fees**

- 4.1 The Client shall pay both the Assignment Fees (which are RW fees for the provision of its services) and the Pay Rate.
- 4.2 In relation to each Assignment, the Parties will agree in writing on a percentage applicable to that Assignment (the "Applicable Percentage") which will be used to calculate the Assignment Fees. The Assignment Fees due under clause 4.1 shall be worked out using the Calculation applying the Applicable Percentage and the Pay Rate.
- 4.3 Assignment Fees and Pay Rate are exclusive of any Value Added Tax which shall be charged by RW at the prevailing rate.
- 4.4 Where there is any increase in the Pay Rate which is agreed between the Client and RW or the Client and the Payroll Worker, RW shall receive the corresponding increase in Assignment Fees from when the increase applies. Where RW requests an increase in the Pay Rate on behalf of the Payroll Worker and the Client does not agree to such increase, then notwithstanding anything else which is agreed between the Parties, RW may provide seven (7) days notice in writing to terminate the affected Assignment(s).
- 4.5 If the base interest rate for Barclays Bank Plc in the United Kingdom which is applicable at the commencement of an Assignment increases during the term of that Assignment, RW may on written notice to the Client increase the Applicable Percentage by the same number of basis points as such base interest rate has increased.

## **5 Time For Payment**

- 5.1 The Client shall pay all RW invoices in full in cleared funds, before the end of a set time period from the date of RW's invoice (the "Payment Period"), time being of the essence. The Payment Period that shall apply to all Assignments will be notified by RW in writing (including by email) prior to the commencement of the first Assignment. If RW does not notify a Payment Period, this shall be seven (7) days. However, if a Risk Event occurs, RW may on written notice to the Client reduce the Payment Period, and the new Payment Period shall apply to all invoices issued by RW after the date of such notification, for all Assignments. For the avoidance of doubt, pursuant to this clause RW may require payment immediately following the invoice being issued.
- 5.2 Except as otherwise agreed in writing between the Parties, all Fees shall be invoiced following the approval of the applicable Timesheet.
- 5.3 The Client is deemed to have accepted an RW invoice if no dispute is raised in respect of the same, within seven (7) days of the date of such invoice. All disputes shall be dealt with promptly, in good faith and escalated to the appropriate levels within RW. No disputed payment shall permit the Client any right of set off against current or future invoices or permit the Client to fail to discharge any other RW invoice issued pursuant to these Terms and Conditions.
- 5.4 Any third party costs and/or expenses (including legal fees and other professional fees) incurred by RW in recovering amounts overdue pursuant to these Terms and Conditions shall be payable by the Client.

## **6 Termination of Assignments and these Terms and Conditions**

- 6.1 The Client acknowledges that each Payroll Worker may be entitled to a period of contractual notice specified in its contract for services with RW (the "Assignment Notice Period"). Where the Client requires termination of the Assignment on a shorter notice period than the Assignment Notice Period, the Client shall be liable for all Fees which would have accrued had that Payroll Worker completed its Assignment Notice Period.
- 6.2 Notwithstanding the Assignment Notice Period, RW may terminate the Assignments of one or more Payroll Workers, or all Payroll Workers, on not less than seven (7) days prior written notice if a Risk Event occurs.
- 6.3 Either Party may terminate These Terms and Conditions:
  - (a) for any reason on not less than thirty (30) days' prior written notice to the other Party; or
  - (b) on written notice to the other Party with immediate effect if (i) the other Party commits a material breach of these Terms and Conditions; or (ii) the other Party becomes insolvent, is adjudicated bankrupt, has a receiver appointed, or has a resolution passed or order made for its liquidation.
- 6.4 Upon termination of these Terms and Conditions under clause 6.3 taking effect, all Assignments then in place shall automatically terminate.
- 6.5 Those clauses which, by their nature, are intended to continue to have effect following termination or expiry of these Terms and Conditions shall survive and continue to bind the Parties.

## **7 Confidentiality and Data Protection**

- 7.1 Each Party will hold information of the other that can be reasonably regarded as being confidential or is notified as being so by the disclosing Party, in confidence and will not disclose such information without the consent of the other Party unless required by law or a court of competent jurisdiction, or it has already been made available to the public other than through a breach of this clause. Any CVs or details of the Payroll Worker provided to the Client by RW shall remain the confidential information of RW.
- 7.2 Both Parties shall comply with its data protection obligations as more particularly set out in the Data Protection Legislation that apply to each of them respectively. The Client shall indemnify RW against all liabilities, costs, expenses, damages and direct losses and all interest, penalties and reasonable legal and professional costs and expenses suffered or incurred by RW arising out of or in connection with any third party claims (including those of Payroll Workers) caused by the misuse of a Payroll Worker's personal data by the Client or its Subsidiaries, or the employees, directors, agents or contractors of each. The Parties agree they act as Controllers under Data Protection Legislation and will process and share personal data relevant to the Terms and Conditions in accordance with Data Protection Legislation for the purpose of performing their respective contractual obligations.
- 7.3 Each Party shall notify the other if there is a personal data breach and have appropriate technical and organisational measures in place to prevent personal data (as defined in Data Protection Legislation) shared under the Terms and Conditions from unauthorised or unlawful processing, accidental loss, destruction or harm. Each Party is responsible for complying with requests from Payroll Workers to exercise their rights under Data Protection Legislation.

- 7.4 The Client must provide a fair processing notice to each Payroll Worker setting out who RW is, what personal data (as defined under Data Protection Legislation) the Client is sharing with RW and why. The information provided to the Payroll Worker must be detailed enough to comply with Data Protection Legislation and prevent RW from providing additional information to a Payroll Worker to comply with Data Protection Legislation.

## **8 Agency Workers Regulations**

Each Party agrees to comply with its statutory obligations under AWR. The Client shall promptly provide RW with such information as RW may reasonably require for the purposes of RW's compliance with its obligations under AWR.

## **9 Auto-Enrolment and other statutory payments**

Under auto-enrolment pension regulations, RW is obliged to automatically enroll eligible Payroll Workers who are engaged on a PAYE basis into a qualifying pension scheme and make contributions to that pension. RW is entitled to charge the Client for any increase in RW's "employment costs" associated with the engagement of the Payroll Worker including, but not limited to, any increase to 'employer' pension contributions, Employer's National Insurance, apprenticeship levy and associated administration as may be varied from time to time.

## **10 Law and Jurisdiction**

- 10.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of England.  
10.2 Any dispute arising out of or in connection with these Terms and Conditions, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## **11 General**

- 11.1 Neither Party shall be liable to the other under or in connection with these Terms and Conditions or any contract made upon them for any indirect or consequential loss, loss of profits, loss of business, loss of revenue loss of anticipated savings, loss of reputation or regulatory fines. Nothing in these Terms and Conditions limits any warranty, exclusion or limitation of liability or right imposed by statute or regulation to the extent that it cannot lawfully be excluded or limited.  
11.2 Subject to the extent that a liability cannot be lawfully excluded or limited, the maximum liability of each Party to the other in respect of any Assignment shall be limited to one hundred and twenty percent (120%) of the Assignment Fees which are payable.  
11.3 If any clause is held by a court of competent jurisdiction to be illegal or unenforceable, that part will be severed from all other terms without affecting the validity or enforceability of all other provisions of these Terms and Conditions.  
11.4 If a Party is prevented in the performance of its obligations under these Terms and Conditions by circumstances that are beyond the control of that Party (acting reasonably) then that Party will not be liable for what would otherwise have been a breach of its obligations under these Terms and Conditions.  
11.5 No failure or delay by either Party in exercising any right or remedy available to it will constitute a waiver of that or any other right or remedy. No waiver or amendment of any clause will be effective unless confirmed in writing to the other Party and in the case of RW, by a director of RW. A person who is not a Party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit from or enforce any term of these Terms and Conditions.  
11.6 Any variation to these Terms and Conditions, including the attempted introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised signatory of RW (unless these Terms and Conditions expressly provide to the contrary).

## **Definitions and Interpretation**

In these Terms and Conditions the following words shall have the following meanings unless the context dictates otherwise:

**"Applicable Percentage"** has the meaning specified in clause 4.2.

**"Assignment"** means the temporary role performed (or to be performed) by a Payroll Worker for the Client.

**"Assignment Fees"** means the fees due to RW in relation to a specific Assignment calculated in accordance with clause 4.2.

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

**"Calculation"** means  $\text{Pay Rate} \times (1 \div (1 - \text{the Applicable Percentage expressed as a decimal}))$ . **"Client"** means you or your ultimate holding company and all of its subsidiaries.

**"Data Protection Legislation"** means the European Union's General Data Protection Regulation (2016/679) (GDPR), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all applicable laws and regulations relating to the processing of personal data and privacy as amended, re-enacted, replaced or superseded from time to time, including any guidance and codes of practice issued by the applicable supervisory authority.

**"Fees"** means Assignment Fees and Pay Rate.

**"Introduced"** means the communicating (through whatever medium) of a Payroll Worker's details by the Client to RW or any other verbal or written communication between the Client and RW that enables the Payroll Worker to be identified, and **"Introduction"** and **"Introduce"** shall be construed accordingly.

**"IR35"** means the off-payroll working rules as set out in the Income Tax (Earnings and Pensions) Act 2003 as amended, most recently by the Finance Act 2020.

**“Losses”** means any loss, liability, demand, claim, proceedings, damage, death, injury, cost, fees or expense (including reasonable legal costs and expenses) of whatsoever nature.

**“Parties”** means collectively RW and the Client and each individually shall be referred to as a **“Party”**.

**“Pay Rate”** means the hourly or daily rate of gross pay agreed between the parties for any Assignment and any other applicable benefits for which there is a cash equivalent paid to the Payroll Worker, profit share, commission, bonus, living allowances, car allowance, travel allowances, overseas allowances and joining inducements (**“Pay”**); together with, for all PAYE Payroll Workers, a charge in respect of: (i) Employer's National Insurance contributions at 13.8% of Pay (**“ENI”**); (ii) pension contribution costs under clause 9 at 3% of Pay; (iii) apprenticeship levy at 0.5% of Pay; and (iv) any other applicable statutory levy or duty, such percentages to be applied as updated by statute from time to time. The Pay Rate is inclusive of any holiday pay or sick pay to which the PAYE Payroll Worker is entitled. ENI, the apprenticeship levy and any other statutory levy or duty will be payable for limited company contractors on Assignment at a public sector or publicly funded client who are in-scope of the IR35 rules.

**“Payroll Services”** means the engaging of Payroll Workers on a contract for services and other ancillary tasks including, but not limited to, invoicing the Client, arranging payment to the Payroll Worker and, in relation to PAYE workers, the withholding of PAYE and payment of other statutory entitlements including pension contributions and work cover entitlements.

**“Payroll Worker”** means an individual Introduced by the Client to RW who may be engaged by RW for an Assignment on a contract for services as either: (i) an agency PAYE worker; or (ii) a limited liability contractor (either through a personal services company or an umbrella company).

**“Risk Event”** means any of the following events: (i) the base interest rate for Barclays Bank Plc in the United Kingdom which is applicable as at the date the first Payroll Worker commences an Assignment through RW increases by more than two point five (2.5) basis points; (ii) the number of Payroll Workers engaged by RW for the benefit of the Client increases by an amount which, in the sole opinion of RW, increases its financial risk; (iii) the maximum credit recommendation for the Client as assessed by Dun & Bradstreet decreases by more than fifty percent (50%) from the maximum credit recommendation for the Client as at the date the first Payroll Worker commences an Assignment through RW; or

(iv) the Client fails to pay undisputed Fees on an invoice issued by RW by the due date for payment of such invoice.

**“RW”** means Robert Walters Operations Limited, a company incorporated in England and Wales whose principal place of business is 11 Slingsby Place, St Martin's Courtyard, London WC2E 9AB.

**“Subsidiary”** shall have the meaning more particularly given in section 1159 of the Companies Act 2006 and the term **“Subsidiaries”** shall be construed accordingly.

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