

## CLIENT TERMS

(these "Client Terms")

### 1. Definitions

In this Contract:

1.1. the following terms shall have the following meaning unless the context otherwise requires:

**"Account"**: the account allocated to you by Broadstone Engage for you to access information and functionality relating to the Service;

**"Actual Vacancies"**: the vacant positions that you inform us about via your Account from time to time in accordance with this Contract;

**"Agreed Purposes"**: means our provision to you of Staffing Workers to conduct Assignments;

**"Assignment"**: the supply of a Staffing Worker by us to you to fill an Actual Vacancy in accordance with Clause 3, subject in all cases to the Contract;

**"AWR 2010"**: the Agency Workers Regulations 2010 (*SI 2010/93*);

**"BES", "we", "us" or "our"**: Broadstone Employment Services Limited, incorporated and registered in England and Wales with company number 11790747 whose registered office is at Neo Building, 9 Charlotte Street, Manchester, Greater Manchester, England, M1 4ET;

**"Broadstone Engage"**: Broadstone Engage Limited, incorporated and registered in England and Wales with company number 10396842 whose registered office is at Neo Building, 9 Charlotte Street, Manchester, Greater Manchester, England, M1 4ET;

**"Broadstone Group"**: means any company which is a subsidiary or holding company of BES, as defined by section 1159 of the Companies Act 2006;

**"Business Day"**: any day other than: (i) a Saturday, (ii) a Sunday or (iii) any day when the clearing banks in the City of London are not physically open for business;

**"Conduct Regulations 2003"**: the Conduct of Employment Agencies and Employment Business Regulations 2003 (*SI 2003/3319*);

**"Confidential Information"**: any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Contract which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential, whether disclosed or obtained before, on or after the date of this Contract, together with any reproductions of such information or any part of such information;

**"Contract"**: these Client Terms together with our **Cancellation Policy** and our **Invoicing and Payment Policy**, and any document referred to in these Client Terms;

**"Controller"**: has the meaning given to it by the Data Protection Act 2018;

**"Data Protection Legislation"**: in relation to any personal data which is processed in the performance of this Contract, the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"), in each case together with any national implementing laws, regulations, secondary legislation and any other applicable or equivalent data protection or privacy laws, as amended or updated from time to time, in the UK, and any successor legislation to such laws;

**"Data Subject"**: has the meaning set out in the Data Protection Act 2018;

**"Engage"**: the employment or engagement of a Staffing Worker directly or indirectly through any employment business other than through us (whether for a definite or indefinite period) as a result of any Introduction or Assignment to you and the terms "**Engaged**" or "**Engagement**" shall be construed accordingly;

**"Event of Force Majeure"**: has the meaning given to it in Clause 16.1;

**"Extended Assignment"**: has the meaning given to it in Clause 5.2;

**"Extended Term"**: has the meaning given to it in Clause 8;

**"Initial Term"**: has the meaning given to it in Clause 8;

**"Introduce"**: the provision to you of information by us which identifies the Worker and "**Introduction**" and "**Introduced**" shall be construed accordingly;

**"Introduction Date"**: the date we Introduces the Staffing Worker to you in accordance with Clause 3;

**"Liability"**: liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Contract, including liability expressly provided for under this

Contract or arising by reason of the invalidity or unenforceability of any term of this Contract (and, for the purposes of this definition, all references to “this Contract” shall be deemed to include any collateral contract);

**“Other Qualifying Payments”**: any remuneration payable to the Staffing Worker (other than their basic hourly rate), which is not excluded by virtue of regulation 6 of the AWR 2010, such as any overtime, shift premium, commission or any bonus, incentive or rewards which are directly attributable to the amount or quality of work done by a Staffing Worker and are not linked to a financial participation scheme (as defined by the AWR 2010);

**“Party”**: either of us or you, and “Parties” shall mean both of us;

**“Permitted Recipients”**: means the Parties, the employees of each Party and any third parties engaged to perform obligations in connection with this Contract;

**“Personal Data”**: has the meaning given to it by the Data Protection Act 2018;

**“Processing”**: has the meaning as set out in the Data Protection Act 2018 and **“Process”** shall be interpreted accordingly;

**“Processor”**: has the meaning given to it by the Data Protection Act 2018;

**“Qualifying Period”**: means the 12-week qualifying period as defined in regulation 7 of the AWR 2010, subject to regulations 8 and 9 of the AWR 2010;

**“Qualifying Staffing Worker”**: any Staffing Worker who at the relevant time is entitled to the rights conferred by regulation 5 of the AWR 2010 and in particular has been provided to you (whether by us or any third party) for the Qualifying Period and in respect of whom we have complied with our obligations under Clause 3;

**“Relevant Period”**: has the meaning given in regulation 10(5) and (6) of the Conduct Regulations 2003;

**“Relevant Terms and Conditions”**: the relevant terms and conditions for any particular Qualifying Staffing Worker as defined in regulation 6 of the AWR 2010;

**“Screen”**: carry out our standard pre-vetting checks in accordance with statutory or regulatory requirements, as detailed in the Service and **“Screening”** shall be construed accordingly;

**“Service”**: the service provided by Broadstone Engage of:

- i. approving time sheets submitted by Workers in relation to Assignments;
- ii. listing potential Assignments on the User App;
- iii. accepting proposed Staffing Workers;
- iv. providing a live chat function enabling you to communicate with Workers directly if applicable; and
- v. providing access to Worker profiles;

**“Smart Staffing Fee”**: has the meaning given in Clause 5.1 and is a transfer fee for the purpose of regulation 10 (2) of the Conduct Regulations 2003;

**“Staffing Worker Fees”**: has the meaning given in Clause 7.1;

**“Staffing Worker”**: a Worker **Introduced** and supplied by us to provide temporary services to you but not as an employee of you, who is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010;

**“Territory”**: the United Kingdom;

**“Unsatisfactory Staffing Worker”**: has the meaning given in Clause 5.2.

**“User App”**: the mobile application software developed and created by Broadstone Engage, to be used by Workers to view opportunities for work including potential Assignments;

**“User Data”**: has the meaning given to it in Clause 14.1;

**“Valid Opt-Out”**: means written notification from a company Worker and the individual provided by that company Worker in accordance with regulation 32(9) of the Conduct Regulations 2003, as amended from time to time;

**“VAT”**: value added tax chargeable in the UK;

**“Vulnerable Person”**: has the meaning given in regulation 2 of the Conduct Regulations 2003;

**“Website”**: our website hosted at **[INSERT]** where you will be able to access the Service;

**“Worker”**: an individual worker, or a worker that is a company or other legal entity, as the case may be; and

**“you”** or **“your”**: the party whose is to received the services of a Staffing Worker under an

- Assignment, who has entered into an agreement with us for access to the Service;
- 1.2. references to “**Clauses**” are to clauses of this Contract;
  - 1.3. the headings are inserted for convenience only and shall not affect the construction or interpretation of this Contract;
  - 1.4. a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.5. a reference to a Party includes its personal representatives, successors or permitted assigns;
  - 1.6. words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
  - 1.7. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.8. any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms; and
  - 1.9. a reference to “**writing**” or “**written**” includes in electronic form and similar means of communication (except under Clause 16).

## **2. Contract**

- 2.1. The terms of this Contract apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. This Contract applies to our supply of Staffing Workers to you, and all Assignments.
- 2.2. Save as expressly provided in this Contract, this Contract shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Contract and in any way relating to the subject matter of this Contract and to the exclusion of any representations not expressly stated in this Contract except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Contract based on any representation that is not expressly incorporated into this Contract.
- 2.3. This Contract constitutes the whole agreement and understanding of the Parties as to the subject matter of this Contract and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Contract.
- 2.4. Submission by you to us of your acceptance of these Client Terms shall be deemed to be an offer by you to receive our services, subject to the provisions of this Contract, and the sending of an email by us to you confirming receipt of your acceptance shall be considered as our acceptance of such offer, at which point this Contract shall be legally formed and the Parties shall be legally bound.
- 2.5. If you provide to us a purchase order for the supply of our services, that order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Contract.

## **3. Employment business's obligations**

- 3.1. For the purposes of the Conduct Regulations 2003, we act as an employment business in relation to the Introduction and supply of temporary workers (“**Staffing Workers**”) pursuant to this Contract.
- 3.2. We agree to search for Workers for you as Staffing Workers who meet your stipulated minimum criteria for the Actual Vacancies.
- 3.3. We shall only take instructions from your approved representative(s) as notified to us from time to time via your Account. We shall not provide any information about Staffing Workers to any other department or staff of yours, without the express prior authorisation of your representative.
- 3.4. We shall Screen Workers before Introducing them to you and shall use our reasonable endeavours to Introduce to you only Workers who meet the minimum criteria for the position stipulated by you in accordance with Clause 3 and who have an interest in the positions for which they are Introduced. We shall Introduce only Workers who we reasonably believe have the right to work in the Territory and, in particular, we shall comply with the Immigration Asylum

and Nationality Act 2006, the Immigration Act 2016 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers.

- 3.5. Where a Worker is required by law or any professional body to have any qualifications, authorisations or certification to work on the Assignment or the Assignment involves working with any Vulnerable Persons, we shall take all reasonably practicable steps to obtain, and offer to provide copies of, any relevant qualifications or authorisations or certification and two references. We shall also take all reasonably practicable steps to confirm that the Worker is suitable for the Assignment. If we are unable to fully comply with these requirements, we shall inform you of the steps we have taken to obtain the necessary information.
- 3.6. Prior to the commencement of an Assignment, the following information will be made available to you through the Service:
  - 3.6.1. the identity of the Staffing Worker;
  - 3.6.2. the Staffing Worker's experience, training, qualifications and authorisations necessary for the Assignment;
  - 3.6.3. the Staffing Worker's willingness to carry out the Assignment;
  - 3.6.4. the hourly rate charged by us;
  - 3.6.5. any notice period to terminate the Assignment.

#### **4. Assignments**

- 4.1. When making a request for the provision of a Staffing Worker to perform certain services to fill an Actual Vacancy ("**Assignment**"), you will use the Service to provide to us, the details of:
  - 4.1.1. the date on which you require the Staffing Worker to commence work and the duration, or likely duration, of the work;
  - 4.1.2. the position which you are seeking to fill, including the type of work the Staffing Worker in that position would be required to do, the location at which, and the hours during which, the Staffing Worker would be required to work, and any risk to health or safety known to you and what steps you have taken to prevent or control such risks;
  - 4.1.3. the experience, training, qualifications and any authorisation which you consider are necessary, or which are required by law, or by any professional body, for the Staffing Worker to possess in order to work in the position;
  - 4.1.4. any additional screening that is required in addition to our Screening of Staffing Workers in accordance with Clause 3.4 (where such additional screening is subject to an additional charge);
  - 4.1.5. any expenses payable by or to the Staffing Worker; and
  - 4.1.6. any information reasonably required by us in order for us to fulfil our obligations under the AWR 2010.
- 4.2. Following your provision of the details relating to an Assignment as set out in Clause 4.1 and our provision of the details relating to a suitable Staffing Worker to perform the Assignment as set out in Clause 3.6, you shall confirm your acceptance of the Staffing Worker via the Service. Our provision of the details as set out in Clause 3.6 shall constitute an offer to enter into an individual Assignment and the submission of your confirmation via the Service shall constitute acceptance of such an offer and a legally binding contract shall be entered into between the Parties for the performance of the individual Assignment on the basis of this Contract.
- 4.3. Each Party shall have the right to terminate an individual Assignment at any time. Each Party acknowledges that the termination of each individual Assignment shall be governed by and conducted in accordance with the terms of our **Cancellation Policy**;
- 4.4. You acknowledge that we shall have no Liability (subject to Clause 12.2) if a Staffing Worker accepts an Assignment and either cancels or withdraws before the commencement of the Assignment, or fails to turn up on commencement of the Assignment or fails to complete the Assignment.
- 4.5. Whilst we agree to carry out Screens in relation to each Staffing Worker, once an Assignment is accepted by a Staffing Worker it shall be your responsibility to satisfy yourself of the suitability of the Staffing Worker, and you are responsible for evaluating any references provided by the Staffing Worker and for verifying that the Staffing Worker has the following:
  - 4.5.1. the required experience, training, qualifications, licences, satisfactory DBS check and any authorisation which may be required by law or by any professional body;

- 4.5.2. such other permission to work as may be required; and/or
- 4.5.3. the relevant qualifications or permission required by the law of the Territory.
- 4.6. You acknowledge that it shall be your responsibility to satisfy yourself of the suitability of the Staffing Worker for an Assignment, including checking the required experience, training, qualifications, licences, satisfactory DBS check and any authorisation which may be required by law or by any professional body for such an Assignment.
- 4.7. You acknowledge that it shall be your responsibility to ensure that a Staffing Worker has a valid and up to date SIA licence (if applicable) before the commencement of and during the Assignment. Where a Staffing Worker's SIA licence is revoked during an Assignment, you acknowledge that you will still have to pay us for the Staffing Worker's time to that point.
- 4.8. You agree that the Screens or any additional checks we carry out in relation to a Staffing Worker's right to work in the Territory must be verified by you on commencement of the Assignment (in accordance with the relevant statutory provisions in force from time to time in such jurisdiction governing illegal working) and we shall have no Liability (subject to Clause 12.2) in connection with any loss, damage or penalty that you may suffer or incur in relation to any Staffing Worker not having the right to work in the Territory and/or in relation to the relevant right to work checks not having been properly carried out in relation to any Staffing Worker.

## 5. Temporary to permanent

- 5.1. If, following the supply of a Staffing Worker by us to you within the Relevant Period, you Engage the Staffing Worker, you will pay us the **Smart Staffing Fee**.
- 5.2. The Smart Staffing Fee will not be payable if you give us written notice that you intend to continue the hire of the Staffing Worker on the same relevant terms as were agreed between us and you for a further period of three months ("**Extended Assignment**") before you Engage the Staffing Worker other than through us.
- 5.3. Where you decide (in accordance with Clause 5.2) to have the Staffing Worker supplied by us for the Extended Assignment:
  - 5.3.1. the Staffing Worker Fees payable by you during the Extended Assignment shall be those applicable to the terms agreed between the Parties immediately before we received your notice under Clause 5.2;
  - 5.3.2. at the end of the Extended Assignment, you may Engage the Staffing Worker without paying the Smart Staffing Fee; and
  - 5.3.3. if you choose an Extended Assignment, but engage the Staffing Worker before the end of the Extended Assignment, the Smart Staffing Fee may be charged by us, reduced proportionately to reflect the amount of the Extended Assignment paid for by you.

## 6. Unsatisfactory staffing workers

- 6.1. We shall notify you immediately if we believe that any Staffing Worker is unsuitable for the Assignment or if we become aware of any matter that indicates that a Staffing Worker may be unsuitable for the Assignment or is inconsistent with any information previously provided including where a Staffing Worker ceases to have the appropriate skills, approvals or a right to work in the Territory.
- 6.2. If you decide that a Staffing Worker is unsuitable to perform the Assignment (an "**Unsatisfactory Staffing Worker**"), then you shall notify us in writing of that fact giving the grounds for your dissatisfaction with the Unsatisfactory Staffing Worker.
- 6.3. If you notify us of an Unsatisfactory Staffing Worker in accordance with Clause 6.2 and you wish to terminate the Assignment, such cancellation shall be subject to the terms of our **Cancellation Policy**:

## 7. Fees

- 7.1. You shall pay us the fees in respect of Staffing Workers ("**Staffing Worker Fees**"). The Staffing Worker Fees comprise the Staffing Worker's pay and holiday pay, and include our commission and employer's National Insurance contributions. When you notify us, via the Website, of your need for a Staffing Worker to perform an Assignment, we shall advise you of the agreed Staffing Worker Fees for that Staffing Worker.
- 7.2. You shall pay the Staffing Worker Fees to us at such times and in such instalments as set out in our **Invoicing and Payment Policy** or as we may direct from time to time. Unless set out otherwise in this Contract, we may issue invoices to you for the Fees at such intervals as we may, at our absolute discretion, consider appropriate.
- 7.3. You shall pay all amounts due to us under this Contract by any payment method that we may stipulate from time to time. No payment shall be considered paid until we have received it in

cleared funds in full.

- 7.4. The Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by you following delivery of a valid VAT invoice by us.
- 7.5. Your payment of all amounts due to us under this Contract shall be in the currency in force in England from time to time.
- 7.6. We reserve the right to increase the Fees by giving you not less than 30 days' notice of such increase taking effect. If you would prefer for this Contract to come to an end, you may terminate this Contract by the provision to us of 10 Business Days to take effect at the end of such 30 day notice period of the increase.
- 7.7. You must pay all amounts due under this Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 7.8. If you are late in paying any part of any monies due to us under this Contract and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Contract or by any statute, regulation or bye-law) do any or all of the following:
  - 7.8.1. charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
  - 7.8.2. recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and
  - 7.8.3. suspend performance of this Contract until payment in full has been made.

## **8. Term**

This Contract takes effect on the Commencement Date and shall continue until it is terminated in accordance with Clause 9 of this Contract.

## **9. Termination**

- 9.1. You may terminate this Contract with immediate effect at any time by notifying us via your Account, or in such a manner as we may specify.
- 9.2. Without prejudice to any of our rights or remedies under this Contract or at law, we may terminate this Contract with immediate effect (or such other notice period as we see fit at our absolute discretion) by giving notice to you if you fail to pay any amount due under this Contract on the due date for payment and such amount remains in default not less than 14 days after being notified to make such payment.
- 9.3. We may terminate this Contract immediately by notice in writing to you if we reasonably consider that our relationship with you may cause our brand or business to be brought into disrepute.
- 9.4. Each Party may terminate this Contract immediately by notice in writing to the other Party if:
  - 9.4.1. subject to Clause 9.1, the other Party is in material breach of any of its obligations under this Contract, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party;
  - 9.4.2. the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; and/or
  - 9.4.3. the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 9.5. Termination of this Contract shall be without prejudice to any accrued rights or remedies of either Party.

- 9.6. Termination of this Contract shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.7. On termination of this Contract for any reason:
  - 9.7.1. you shall cease to have access to the Service; and
  - 9.7.2. you shall pay to us any outstanding amounts due to us as Staffing Worker Fees which relate to the period prior to termination, whether invoiced or not.
- 9.8. Termination (or expiry) of the agreement between us and you granting you access to the Service, howsoever arising, shall automatically terminate all Assignments, in force as at the date of such termination (or expiry); all ongoing Assignments as at the date of such termination shall terminate with immediate effect and termination of such Assignments shall in any event be subject to the terms of **our Cancellation Policy**.
- 9.9. The termination of any Assignment shall not effect any other Assignment, or the agreement between us and you granting access to the Service.

#### **10. Audit and record-keeping**

- 10.1. For the duration of this Contract and for a period of six years from the termination or expiry of this Contract, we shall maintain full and accurate records of:
  - 10.1.1. the services provided by us under this Contract including but not limited to how we have complied with our obligations under Clause 3;
  - 10.1.2. all expenditure reimbursed by you;
  - 10.1.3. all payments made by you;
  - 10.1.4. the terms on which it or any subcontractors engage any Staffing Workers;
  - 10.1.5. the Screening undertaken on any Staffing Workers; and
  - 10.1.6. the insurance certificates and details of cover referred to in clause 12.12

#### **11. Indemnities and insurance**

- 11.1. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with your negligence, misrepresentation or the breach of any obligation to be performed by you under this Contract.
- 11.2. We shall be responsible for deduction and payment of all tax, National Insurance contributions and other levies in respect of Staffing Workers and shall indemnify you against all liabilities to make such statutory payments that may be suffered or incurred by you.
- 11.3. Before a Staffing Worker starts an Assignment, you shall notify us if either:
  - 11.3.1. the Staffing Worker is a Qualifying Staffing Worker in relation to the Assignment; or
  - 11.3.2. the Staffing Worker will become a Qualifying Staffing Worker during the course of the Assignment.
- 11.4. You shall at all times comply with your obligations under the AWR 2010, including but not limited to providing any Staffing Workers with access to collective facilities and amenities and employment opportunities subject to and in accordance with regulations 12 and 13 of the AWR 2010.
- 11.5. You shall indemnify us against any Liability, cost, claim, award or any other expense incurred by us arising out of a breach or alleged breach by you, your subcontractors or any other intermediaries, of the AWR 2010 save to the extent that you are, in accordance with the AWR 2010, Liable for the same.
- 11.6. If either Party receives an allegation that there has been a breach of the AWR 2010 in relation to the supply of a Staffing Worker to you by us (whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other Party within seven days of receipt. The Parties shall co-operate with each other in responding to that allegation, which shall include supplying any information which may be reasonably requested by the other Party, and complying with any reasonable requests in relation to the contents of any response.
- 11.7. The provisions of this Clause 11 shall survive termination of this Contract.

#### **12. Limitation of Liability**

- 12.1. This Clause 12 prevails over all of this Contract and sets forth our entire Liability, and your sole

and exclusive remedies, in respect of:

- 12.1.1. performance, non-performance, purported performance, delay in performance or mis-performance of this Contract or any services in connection with this Contract; or
  - 12.1.2. otherwise in relation to this Contract or entering into this Contract.
- 12.2. Neither Party excludes or limits its Liability for:
- 12.2.1. its fraud; or
  - 12.2.2. death or personal injury caused by its Breach of Duty; or
  - 12.2.3. any breach of the obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - 12.2.4. any other Liability which cannot be excluded or limited by Applicable law.
- 12.3. Subject to Clause 12.2, and other than any Liability arising pursuant to this Contract, we do not accept, and we hereby exclude, any Liability for Breach of Duty.
- 12.4. Subject to Clause 12.2, we shall not have any Liability in respect of any:
- 12.4.1. indirect or consequential losses, damages, costs or expenses;
  - 12.4.2. loss of actual or anticipated profits;
  - 12.4.3. loss of contracts;
  - 12.4.4. loss of use of money;
  - 12.4.5. loss of anticipated savings;
  - 12.4.6. loss of revenue;
  - 12.4.7. loss of goodwill;
  - 12.4.8. loss of reputation;
  - 12.4.9. loss of business;
  - 12.4.10. ex gratia payments;
  - 12.4.11. loss of operation time;
  - 12.4.12. loss of opportunity;
  - 12.4.13. loss caused by the diminution in value of any asset; or
  - 12.4.14. loss of, damage to, or corruption of, data;
- whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 12.4.1 to 12.4.14 (inclusive) of this Clause 12.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 12.5. Subject to Clause 12.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to £1,000,000.
- 12.6. The limitation of Liability under Clause 12.5 has effect in relation both to any Liability expressly provided for under this Contract and to any Liability arising by reason of the invalidity or unenforceability of any term of this Contract.
- 12.7. You acknowledge and accept that we only make the Assignment available on the express condition that we will not be responsible, nor, subject to Clause 12.2, shall we have any Liability, directly or indirectly, for any act or omission of you, your affiliates or your or their employees, agents, contractors or customers or any third party.

### **13. Confidentiality**

- 13.1. Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 13.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Contract; or
  - 13.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 13;
- Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
- 13.2. A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:
- 13.2.1. it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

- 13.2.2. it does so subject to obligations equivalent to those set out in this Clause 13.
- 13.3. A Party may disclose the Confidential Information of the other Party to the extent such Confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 13.4. The obligations of confidentiality in this Clause 13 shall not extent to any matter which either Party can show:
- 13.4.1. is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Contract; or
  - 13.4.2. was independently developed by it; or
  - 13.4.3. was independently disclosed to it by a third party entitled to disclose the same; or
  - 13.4.4. was in its written records prior to receipt.
- 13.5. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Contract are granted to the other Party, or to be implied from this Contract.
- 13.6. On termination of this Contract, each Party shall:
- 13.6.1. return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - 13.6.2. erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 13.6.3. certify in writing to the other Party that it has complied with the requirements of this Clause 13.6, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 13 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Contract for any reason.
- 13.7. The provisions of this Clause 13 shall continue to apply after termination of this Contract.

#### **14. Data protection**

- 14.1. The Parties acknowledge that, in relation to their obligations under this Contract, they will each act as independent Controllers in respect of any Personal Data relating to the Staffing Workers ("**User Data**"). For the avoidance of doubt, it is not envisaged that you will be processing User Data as a Processor on our behalf.
- 14.2. This Clause 14 sets out the framework for the sharing of User Data between the Parties. Each Party acknowledges that it (the "**Data Discloser**") will regularly disclose to the other Party (the "**Data Recipient**") User Data, collected by the Data Discloser for the Agreed Purposes. In no event will the Parties process the User Data as joint Controllers.
- 14.3. Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate the Agreement with immediate effect.
- 14.4. The Data Discloser shall be responsible for:
- 14.4.1. complying with all necessary transparency and lawfulness requirements under Data Protection Legislation in order to disclose the User Data to the Data Recipient to Process for the Agreed Purposes; and
  - 14.4.2. presenting to the relevant Data Subjects a link to, or a copy of, the transparency notice as provided by Data Recipient to the Data Discloser in a form agreed between the Parties to enable the Data Recipient to comply its necessary transparency and lawfulness requirements under Data Protection Legislation.
- 14.5. Each Party shall:
- 14.5.1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the User Data to the Permitted Recipients for the Agreed Purposes;
  - 14.5.2. give full information to any Data Subject whose Personal Data may be Processed under this Agreement of the nature such Processing. This includes giving notice that,

on the termination of the Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

- 14.5.3. Process the User Data only for the Agreed Purposes;
  - 14.5.4. not disclose or allow access to the User Data to anyone other than the Permitted Recipients;
  - 14.5.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the User Data (including, obligations of confidentiality) which are no less onerous than those imposed by this Clause 14; and
  - 14.5.6. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 14.6. Each Party shall provide reasonable assistance to the other Party in complying with the Data Protection Legislation. In particular, each Party shall:
- 14.6.1. promptly inform the other Party about the receipt of any Data Subject access request relating to the other Party's Processing of Personal data, provide the other Party with reasonable assistance in complying with any such Data Subject access request, and not disclose or release any User Data in response to such a Data Subject access request without first consulting the other Party wherever possible;
  - 14.6.2. assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 14.6.3. notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation relating to the sharing of Personal Data under this Clause 14;
  - 14.6.4. use compatible technology for the Processing of User Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
  - 14.6.5. maintain complete and accurate records and information to demonstrate its compliance with this Clause 14; and
  - 14.6.6. provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.
- 14.7. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) that we suffer or incur by the arising out of or in connection with the breach of the Data Protection Legislation by you, your employees or agents, provided that we give you prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 14.8. The rights and remedies provided under this Clause 14 are in addition to, and not exclusive of, each other and/or any rights or remedies provided by law.

#### **15. Non-solicitation**

Neither Party shall, either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of six months from, the end of the term of this Contract, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of the other party who has worked on the services provided under this Contract at any time during the term of this Contract other than by means of a national advertising campaign open to all-comers and not specifically targeted at such executives of the other Party.

#### **16. Force Majeure**

- 16.1. Subject to Clause 12.2 neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Contract which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "Event of Force Majeure" means any cause outside of the Party's reasonable control,

including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.

- 16.2. Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 16.3. The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 16.4. Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 16.5. If the performance of any obligations is delayed under this Clause 16.1, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 16.6. If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Contract immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 12.2) to the other Party by reason of such termination.
- 16.7. If we have contracted to provide identical or similar services to more than one customer and we are prevented from full meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.

#### **17. Notices**

- 17.1. Any notice given to either Party under or in connection with this Contract shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or sent by email.
- 17.2. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 17.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, at the time of transmission.
- 17.3. The provisions of this Clause 17 shall not apply to the service of any proceedings or other documents in any legal action.

#### **18. Assignment**

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Contract or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

#### **19. Severance**

- 19.1. If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 19.2. If any invalid, unenforceable or illegal provision of this Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **20. Waiver**

A waiver of any right or remedy under this Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of

that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

**21. Third party rights**

- 21.1. Subject to Clause 21.2, no term of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 21.2. The Parties intend that any right conferred upon BES under this Contract shall be enforceable by any company within the Broadstone Group pursuant to and in accordance with the Contracts (Rights of Third Parties) Act 1999.

**22. Variation**

We may change this Contract at any time by sending you an email with details of the change or notifying you of a change when you next login to your Account. The new terms may be displayed on-screen and you may be required to read and accept them to continue access the Service. If you do not agree with the changes, you may terminate this Contract in accordance with Clause 9.

**23. No partnership**

Nothing in this Contract shall constitute a partnership or employment or agency relationship between the Parties.

**24. Counterparts**

This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**25. Governing law and jurisdiction**

- 25.1. This Contract and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 25.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.