

GENERAL TERMS AND CONDITIONS OF A SERVICE AGREEMENT WITH CUSTOMERS THAT HAVE WORKERS ABROAD, FOR PROVIDING THEM REPRESENTATIVES AND FOR FACILITATING THEM, THROUGH AN INTERNET PLATFORM, THE COMPLIANCE WITH REGULATIONS SET FORTH IN SOME EU COUNTRIES REGARDING DIRECTIVE 2014/67/EU OF 15 MAY 2014

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**1.- BACKGROUND.** Within the framework of Directive 2014/67/EU of 15 May 2014 of the European Parliament and of the Council, related to ensuring compliance with Directive 1996/71/EC of 16 December on the travelling of workers to provide services abroad, some European Union State Members have issued regulations (the first one was Decree no. 2016-418 of 7 April 2016 in France), which require to make available certain documents to Authorities and in some Countries also the appointment of a resident representative, for companies providing international and/or cabotage transport services of freight and persons by road with employees (drivers) travelling on board of vehicles.

The documentary obligation is required for proving that employees travelling on board of vehicles receive at least the legal minimum hourly payment and have the minimum rest periods set forth in the host Country for workers of similar professional category.

Directive 2014/67/EU sets forth the obligation to designate either one or two different kinds of representatives (paragraphs e) and f) of point 1 of article 9):

- The first kind of representative who must be resident in the host Country where workers are posted, is committed to be the liaison with the competent authorities in the host Country. His only duty is to make documents available to authorities and receive notices, when required.
- The second kind of representative, who doesn't need to be resident in the host Country, can be required for representing posted workers in collective bargaining in the host Country during the posting periods.

Neither of them is required to have specific qualifications and must be identified with their details in the communications of posted workers to authorities.

The first kind of representative shall have access to data and documents of the carrier related to the EU host Country where he acts as such representative, obviously only for the purpose of being the liaison between carrier and Authorities of the relevant EU host Country, even after being ceased or having resigned, during a mandatory term set forth in the relevant EU host Country Regulation.

**2.- SERVICIOS BAGEM, SL.** (herein after BAGEM) is the service provider to the customer (hereinafter, the "Customer" or "Employer/s"). It is a Spanish Company settled in Paseo de la Castellana, 176 1B, 28046 Madrid (Spain) ID Tax Number as intercommunity Operator ES-B78478146, registered in the Commercial Register of Madrid (Spain) in Volume 3437, folio

160, page M-58137. Its designated email address for notifications is [minimumwage@serviciosbagem.com](mailto:minimumwage@serviciosbagem.com).

### **3.- PURPOSE OF THE AGREEMENT**

The purpose of this service Agreement is to facilitate customers the compliance with the obligations of appointing representatives and making available documents to Authorities in accordance with Regulations set forth in some EU Member States. The service is intended to be also extended to all EU and EEA countries that in the future establish similar obligations to haulers within the framework of Directive 2014/67/EU of 15 May 2014, in accordance with Directive 96/71/EC, of 16 December 1996, on posted workers to their territories.

### **4.- THE SERVICE**

The SERVICE provided by BAGEM its customers encompasses the following items:

- The provision of the resident representative to clients said in section 1 (Background) in any EU Member State that implements the Regulation in the sense of article 9 point 1 paragraph e) of Directive 2014/67/EU of 15 May 2014 of the European Parliament. Representative's duty is only to be the liaison between Authorities and the client. It is understood that he will not provide advice or consultant services.
- The use of a server application, on a nonstop basis 24 hours daily, featured in Schemes 1, for enabling them compliance with the duty of making available to Authorities required documents for proving payment at least of an amount beyond the minimum wage and compliance with other labour duties on drivers posted in EU host Countries, as set forth by their Regulations.
- The second kind of representative is not provided by BAGEM as he can be any person of client's staff who can reside anywhere. He only must be available in case, for entering into collective bargaining as representative of posted workers during the posting periods.

### **5.- COVENANTS**

Regarding the service, parties agree as follows:

- 5.1. Customers are in charge of the handling of the employees' documents, and they will be the only accountable persons for registering data and uploading the documents on to the server application, of their content, accuracy, completeness, of ensuring that procedures are done properly, correctly and of been uploaded in time, except if the defects are caused by shortcomings or interruptions of the SERVICE by BAGEM
- 5.2. BAGEM is not responsible in any circumstance for ensuring that the documents uploaded are complete or meet legal requirements of the EU host Countries.

- 5.3. BAGEM shall not verify that the information provided or that the documentation submitted is accurate or fulfills the legal requirements, and furthermore accepts no liability for damages or penalties resulting from inaccurate or incorrect information or documentation provided by the Customer.
- 5.4. On the other hand BAGEM is the only responsible of the server application, of its availability, and the compliance of representative's duties in the host Countries.
- 5.5. BAGEM will treat all documents or data uploaded or entered by clients or agents as property of the client, and will destroy or return any copy of these documents and data upon written request of the latter. BAGEM shall automatically destroy documents after the maintenance period required by the Regulation of the relevant EU host Country as soon as they become useless.
- 5.6. BAGEM may change the representative designated in any EU host Country with no interruption of the SERVICE, without need of requesting consent to the customer who expressly accepts the designation made by BAGEM.
- 5.7. Customer authorizes BAGEM to receive, store, and process the data necessary to provide this service and additionally has authorized BAGEM and any third party to transfer this data to the Representative as well as any other third party as is necessary for the fulfillment of this Agreement
- 5.8. Customer guarantees that it has, in compliance with all applicable personal data protection regulations, received explicit permission from all drivers, crew and any other employees whose personal data must be transmitted in accordance with this Agreement that these parties are authorized to give and have given their consent to have their personal data processed by BAGEM and any other third parties as is necessary to fulfill the terms outlined in this Agreement.
- 5.9. BAGEM shall presume the representation of the "Employer/s" as stated by the "Customer" to be correct and valid to the extent that the "Customer" had accepted this Agreement, had registered the "Employer/s" and had uploaded to the server of BAGEM the employees' documents of the relevant "Employer".
- 5.10. Customer agrees that its identity is protected against impersonations by a password of his choice.
- 5.11. The access to employee's personal data and details, recorded on BAGEM server, is restricted to the following persons:
  - The Customer but only to data and details of employees represented by them.
  - Employees to their own data and details.
  - Authorized staff of BAGEM and IT team in charge of the maintenance and development of the server and the application, but only for the purposes of this Agreement

- Representatives restricted to the data related to the Country where they reside.
- Authorities of the host Country at their request with respect to data under the Regulation in its territory.

**5.12.** Additionally, BAGEM undertakes the following obligations:

- To assure that the server application is available to customers with high quality and continuity in non-stop basis. It will only be stopped by BAGEM for the sake of maintenance or updating the application, but for short periods and preferably out of working hours.
- To provide corrective maintenance and upgrading the server application, as well as developing and adding on it any reasonable feature or tool focused on making client's work easier and more efficient according to state of the art.
- BAGEM will ensure that the SERVICE is provided in compliance with the applicable legal requirements and will proactively adjust it if there is any change in these last.
- BAGEM is responsible for providing to customers a smooth working environment anytime. If there is a failure in this regard, BAGEM will take all steps necessary to rectify the failure without delay.
- BAGEM is accountable of its representatives in the sense that they comply what is required by the Law in the relevant EU host Country, pursuant or in the frame of article 9 point 1 paragraph e) of Directive 2014/67/EU of 15 May 2014 of the European Parliament.

## **7.- APPOINTMENT OF RESIDENT REPRESENTATIVES**

Customer hereby appoints BAGEM to act on the Customer's behalf for assigning the Representative of the latter.

Customer also authorizes the Representative to notify the relevant authorities of its appointment and transfer any documents or information as is required by the applicable regulations.

BAGEM, SL may change the representative designated in the any Country without having to request the consent to the "Customer" who expressly accepts the designation made by BAGEM.

Appointment of representatives is linked to validity of this Agreement, so "Customer" undertakes to not use appointed representatives after expiration of this Agreement for whatever cause.

## **8.-SERVICE FEES**

BAGEM is entitled to a service a fee for the provision of the service, calculated on a daily base according to the following rates:

- 8.1. With respect to EU host Countries that require a resident tax representative of the first kind as defined in section 1 (Background) to be the liaison with the competent authorities, fees are calculated on a daily base at a yearly rate of 20 (twenty) EUR per year, per employee and per Country for which customer had recorded employees in the system. Periods shorter than a day within a same day will be rounded up as a whole day. Fees will be invoiced monthly.
- 8.2. With respect to EU host Countries that doesn't require a resident tax representative to be the liaison with the competent authorities, fees are calculated on a daily base at a yearly rate of 5 (five) EUR per employee and per Country for which customer had recorded employees in the system. Periods shorter than a day within a same day will be rounded up as a whole day. Fees will be invoiced monthly.

The foregoing remuneration covers the entirety of the SERVICE, including but not limited to any expense of BAGEM owed to the correction of any defects or deficiencies found in the SERVICE, licensing, registration, administrative, legal or similar, fees or taxes (excluding Value Added Tax).

## 9.- DATA PROTECTION

BAGEM recognizes that it will handle data that falls under European Personal Data Protection Regulations and will comply with all applicable provisions. Therefore, BAGEM assures that:

- BAGEM staff, as the "*controller*" of the "*filing system*", with access to the "*filing system*" is perfectly aware of their duties regarding personal data protection in the "*filing system*" and know how to use the data. BAGEM will appoint a data protection officer.
- CIF, SL is the "*processor*" and the software developer of the system, whose staff devoted to it perfectly aware of their duties regarding the personal data protection in the "*filing system*".
- All third parties engaged by BAGEM (i.e. the Representative) will also comply with the applicable data protection provisions.
- All personal data will be treated as strictly confidential and handled with the utmost care.
- No personal data will be transferred outside of the European Union.
- No personal data will be disclosed to any third parties other than those mentioned in this agreement (i.e. the Representative, who may also disclose upon request to relevant authorities).

- No personal data will be stored longer than is necessary to provide the SERVICE.
- No personal data will be processed for any reasons other than what are necessary to perform this SERVICE.
- All personal data will be stored securely and protected from unauthorized access.
- All data transmitted to BAGEM as part of this SERVICE will remain the property of the client and will be returned or destroyed if requested by it in written or required by law or a court of law.
- Data transmitted to BAGEM as part of this SERVICE that has been processed (e.g. made into a database) are also considered property of client.
- The terms of the data protection provisions will remain valid even if the agreement is ended.

#### **10.– LIMITATION OF LIABILITY**

- BAGEM cannot be held liable by the Customer for any (consequential) damages and/or consequential losses and loss of profits suffered by the Customer for any reason whatsoever, except for damages caused intentionally or by the gross negligence of BAGEM or of its management.
- Any exclusion or limitation of liability by BAGEM pursuant to the foregoing paragraph applies for the benefit of its employees or of third parties used by BAGEM if the Customer seeks redress directly against the employees or against such third parties.

#### **11.– EXECUTION OF THE AGREEMENT**

This agreement shall be deemed validly accepted by the "Customer" when this one has executed the following acts:

- Customer has marked acceptance box on the web site of BAGEM application as recognition sign of acceptance of this Terms and Conditions.
- Customer has identified himself on BAGEM application.
- Customer has used the service.

#### **12.– AMENDMENTS AND ALTERATIONS TO THE AGREEMENT**

**12.1.** BAGEM shall be authorized to increase the Fees if and insofar as application costs or the legal or regulatory situation affecting BAGEM's costs – directly or indirectly – change significantly. BAGEM shall from time to time be authorized to revise the Fees on the basis of current costs and the current market situation. BAGEM shall notify the Customer of an increase in Fees by email at least one (1) month prior to date of change.

**12.2.** If and insofar as European or national laws, orders, regulations, decrees or other rules affecting this Agreement and the arrangements contained herein change, BAGEM may be authorized to make the appropriate changes to these contractual conditions. BAGEM shall notify the Customer of any such changes at least two (2) months prior to the effectiveness of the modification. Changes shall be deemed to have been accepted if the Customer continues using the service.

### **13.- TERM AND TERMINATION OF THE AGREEMENT**

No minimum period of continuity in the Agreement is required. Either party may terminate the Agreement at any time as follows:

**13.1.** The "Customer" shall be understood to temporarily terminate the Agreement when it fails to pay BAGEM invoices. During that period of provisional termination, the "Customer" cannot upload documents nor add or modify records and use the appointed representatives. The termination shall become final if it maintains the account unpaid for 2 years and during that period all the records are maintained

During the period of provisional termination, the "Customer" can reactivate the service by making payments to balance the unpaid account. During the period of temporary termination, since BAGEM, SL as representative shall be required to maintain the representation and documents of any employees, who were active, until maturity, a negative balance may be generated which, if any, shall be settled if the "Customer" reactivates the service.

**13.2.** The "Customer" may also unilaterally terminate the Agreement at any moment by notifying its decision by email to BAGEM, but that does not release it from the obligation to pay any outstanding amounts or any amounts that may be accumulated in the future for use of the service since BAGEM as representative shall be required to maintain the representation and the documents of employees which were active until maturity thereof.

**13.3.** BAGEM, may terminate the Agreement unilaterally with respect to a "Customer" for reasonable cause by at least one month prior notice, notwithstanding its obligation to comply with its obligations of representation with respect to active documents at that time until the expiry of their respective terms of effectiveness.

### **14.- GOVERNING LAW AND DISPUTE RESOLUTION**

All legal relations in connection with the Agreement shall exclusively be governed and construed by the laws of Spain

Any dispute arising out of or related to the interpretation and/or termination of this contract shall be under the exclusive jurisdiction of the Court of Madrid (city).

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