

# BurnettTalentNOW User Agreement & Terms of Service

This User Agreement (the “Agreement”) is legally binding and governs your use of the BurnettTalentNOW website, platform, and all related web or mobile services (collectively, the “Platform”). BurnettTalentNOW is a d.b.a. of The Burnett Companies Consolidated, Inc. and is operated separately from Burnett Specialists full-service staffing model.

By creating an account, entering payment information, or approving timesheets, you (“Client”) agree to be bound by this Agreement. A breach of any term may result in immediate suspension or termination of your account at BurnettTalentNOW’s sole discretion.

## 1) Acceptance of Terms

By using the Platform, you:

- Acknowledge the Platform is self-service with no recruiter involvement.
- Agree to supervise, direct, and evaluate all workers assigned through the Platform (“Workers” or “Candidates”).
- Understand BurnettTalentNOW is not a professional services firm and does not provide legal, accounting, engineering, medical, or other professional advice.
- Accept these Terms as the complete agreement unless replaced by a separate signed agreement.

## 2) Changes to Services

BurnettTalentNOW may update, modify, or discontinue any portion of the Platform or this Agreement at BurnettTalentNOW’s sole discretion and without notice. The current version will always be posted on the Platform. Continued use constitutes acceptance of updates.

## 3) Eligibility & Account Requirements

- You must be 18+ and provide accurate registration info (full legal name, valid email, payment details).
- You are responsible for all activity under your credentials and must promptly notify us of any suspected breach.
- One login per user; accounts are non-transferable and non-shareable.

## 4) Nature of Services; Strategic Staffing Relationship

The Platform enables Clients to source and manage contingent labor on a self-serve basis.

BurnettTalentNOW acts as employer of record for Workers engaged through the Platform and provides payroll/tax withholdings and applicable benefits as required by law. From time to time, Client may communicate needs for Candidates via Platform workflows; BurnettTalentNOW will use commercially reasonable efforts to make available qualified Candidates.

## **5) Assignment Posting & Cancellations**

- Client shall provide accurate and complete details for each assignment, including worksite location, job duties, required skills, pay rate, and shift times.
- Assignments must comply with all applicable federal, state, and local employment laws.
- Client shall not request or require candidates to provide photos, genetic information, or other protected personal data as a condition of assignment.
- Each assignment is subject to a four (4) hour minimum billing requirement per worker, per shift.
- If Client cancels an assignment with less than 24 hours' notice, Client agrees to pay a cancellation fee equal to four (4) hours of the worker's hourly rate for each scheduled worker.

## **6) Payment Terms; Invoicing**

- A valid credit card is required. Your card is automatically charged for each approved timesheet.
- Approving a timesheet certifies the hours are correct and authorizes the charge.
- Payments are due immediately upon charge. Late fees may accrue at 1.5% per month (or the maximum legal rate), plus reasonable collection costs.
- If BurnettTalentNOW offers consolidated invoicing by written arrangement, Client must pay net 30; otherwise, credit-card terms control. BurnettTalentNOW may suspend or terminate access for non-payment or invalid payment methods.

## **7) Rates; What's Included**

- Unless expressly stated otherwise on the assignment, Platform bill rates are all-inclusive of recruitment/administration, statutory payroll taxes, and employer burdens.
- Travel/per-diem or other stipends, if applicable, will be shown or agreed in writing. Client acknowledges applicable tax limitations and agrees BurnettTalentNOW may provide substantiation as required by law.

## **8) Timekeeping & Approval**

- Client shall ensure accurate recording and approval of all time worked; no "off-the-clock" work is permitted.
- Approved weekly time records are due by noon Tuesday (Client local time) for the prior week.
- If Client fails to timely approve or object, Worker-submitted or system-submitted time may be deemed accurate for billing.

## **9) Client Responsibilities (Supervision; Restrictions; Safety)**

- Client supervises Workers and safeguards premises, processes, systems, data, and confidential information.
- Without BurnettTalentNOW's prior written consent, Client shall not entrust Workers with unattended premises, cash, checks, keys, credit cards, negotiable instruments, merchandise, confidential/trade secret information, or other valuables.
- Workers shall not use any vehicle in connection with services or be reassigned to materially different duties, departments, sites, or hazards without prior approval.

- Client must provide a safe and healthy work environment, all necessary safety training and orientation, PPE, and comply with OSHA and all occupational health and safety laws.
- Both parties are equal opportunity employers and will cooperate in investigating any discrimination or harassment claims.

#### **10) Remote / Offsite Engagements**

- Client shall ensure remote workers are provided with secure access to systems and implement safeguards for confidential data, PII, and PHI.
- Client assumes responsibility for compliance with all applicable privacy/data protection laws (GLBA, HIPAA, Texas data breach laws).
- If workers use Client-provided equipment, it must be secure and compliant; if personal devices are used, Client assumes all risk.
- Client indemnifies, defends, and holds BurnettTalentNOW harmless for claims alleging or arising from Client's inadequate IT/data safeguards.

#### **11) Light Industrial / Equipment Assignments**

- Client is responsible for providing all safety training, instruction, orientation and PPE before work begins.
- Compliance with OSHA and workplace safety laws is required.
- Workers may not operate forklifts, heavy machinery, or vehicles unless:
  - (a) Client provides written notice in advance,
  - (b) BurnettTalentNOW expressly approves in writing, and
  - (c) Client certifies the worker's training and certification.
- Client indemnifies, defends, and holds BurnettTalentNOW harmless for claims from claims alleging or arising out of Client's failure to meet safety/equipment-use obligations.

#### **12) Worker Relationship; Compensation; Records**

BurnettTalentNOW (or affiliate/subcontractor) will employ and compensate Workers, make required withholdings and filings, and maintain employment records.

Workers are not authorized to render professional opinions (legal, engineering, medical, etc.) on behalf of Client.

#### **13) Screening; Documentation; Client Policies**

- BurnettTalentNOW may maintain competency and compliance documentation (e.g., references, license checks, background screening, health screens).
- Where permitted by law, BurnettTalentNOW will use reasonable efforts to make documentation or attestations available prior to or by the Worker's start date.
- Client will provide relevant policies/procedures (job description, standards, confidentiality, privacy, safety, infection control, etc.) prior to the Worker's start date and treat personnel information as Confidential.

#### **14) Worker Dispute Escalation**

- Client must promptly notify BurnettTalentNOW of disputes, complaints, or incidents involving a worker.
- Client shall not remove or discipline a worker without notice, except in cases of imminent safety risk.
- Both parties will cooperate in investigating and resolving disputes.

#### **15) Performance Management; Incident Reporting**

Client shall notify us of unsatisfactory performance or misconduct and provide written details

#### **16) Injury/Illness/Exposure Response**

- For non-emergencies: Worker must notify BurnettTalentNOW and seek treatment at a designated provider.
- For emergencies: Client will direct Worker to the nearest ER and assist with transport.
- Incident reports must be promptly submitted.

#### **17) Communicable Disease Protocols**

- Client must comply with CDC/OSHA or other applicable guidance.
- If guaranteed hours are required by law or assignment terms, Client is responsible (not exceeding four (4) weeks unless law requires otherwise).

#### **18) Meal/Rest/Recovery Breaks**

Client must schedule legally required breaks. If BurnettTalentNOW determines premiums are required due to missed breaks, BurnettTalentNOW may bill pass-through costs, and Client indemnifies and defends BurnettTalentNOW from any claims resulting therefrom.

#### **19) Work Product; No Guarantees**

BurnettTalentNOW makes no guarantees regarding Worker performance. Reference checks are internal only. Additional vetting (background checks, drug tests, credential verification) is Client's responsibility unless otherwise agreed.

#### **20) Technology Solutions; Terms of Use; IP**

Client may access BurnettTalentNOW's Platform and related technology solutions (including third-party tools). Client agrees to comply with applicable terms of use and execute additional agreements as reasonably required.

The Platform and all related technology, design, source code, databases, content, data, and materials are proprietary to BurnettTalentNOW. Except for the limited right to use the Platform to procure/manage services, all rights are reserved.

Client shall limit access to personnel with a legitimate need, promptly notify us when access should be revoked, and not attempt to copy, scrape, reverse engineer, or create derivative works.

BurnettTalentNOW may monitor usage for security and compliance.

**AS IS:** Technology is provided “as is” without warranties; BurnettTalentNOW does not warrant error-free or uninterrupted operation.

### **21) Conversion / Direct Hire**

If Client hires a Worker directly (outside the Platform) within 365 days of the Worker’s last assignment, a conversion fee equal to twenty-five percent (25%) of the Worker’s annual base salary is due upon start of Client’s employment.

If Client refers a Worker to any affiliate, subsidiary, related entity, or other third party, and that referral results in employment or engagement, the same 25% conversion fee applies.

Order of Precedence: The 25% flat fee supersedes any contrary language (including any “service credit” concepts) in prior forms or ancillary materials.

### **22) Insurance**

BurnettTalentNOW maintains:

- Commercial General Liability Insurance with limits of at least \$1,000,000 per occurrence / \$2,000,000 aggregate.
- Workers’ Compensation Insurance in accordance with Texas law.
- Employer’s Liability Insurance with limits of at least \$1,000,000 per occurrence.

**Additional Insured:** Client shall be added as an Additional Insured on BurnettTalentNOW’s Commercial General Liability policy, subject to policy terms.

### **23) Indemnification (Mutual); Defense Procedure**

**BurnettTalentNOW Indemnity.** BurnettTalentNOW will defend, indemnify, and hold Client harmless from claims, losses, damages, and expenses (including reasonable attorneys’ fees) arising out of or alleging:

- (a) BurnettTalentNOW’s breach of this Agreement;
- (b) BurnettTalentNOW’s violations of law; ,
- (c) the negligent or intentionally wrongful acts/omissions of BurnettTalentNOW or its agents in connection with services; including:
  - (i) bodily injury or death to Workers subject to workers’ compensation laws; and
  - (ii) damage to property, each to the extent caused by BurnettTalentNOW’s negligence or willful acts.

**Client Indemnity.** Client will defend, indemnify, and hold BurnettTalentNOW (and BurnettTalentNOW’s affiliates, officers, directors, employees, agents, clients, and subcontractors) harmless from claims, losses, damages, and expenses (including reasonable attorneys’ fees) arising out of or alleging:

- (a) Client’s breach of this Agreement;
- (b) Client’s violations of law;
- (c) Client’s supervision, control, workplace conditions, safety violations, or unlawful acts;+

(d) the negligent or intentionally wrongful acts/omissions of Client or its agents in connection with services; including:

- (i) bodily injury or death to Workers subject to workers' compensation laws; and
- (ii) damage to property, each to the extent caused by BurnettTalentNOW's negligence or willful acts.

(d) discrimination/harassment, wage/hour, or other employment-related claims alleging or arising from Client conduct; and

(e) Client's misuse of the Platform.

**Procedure.**

Neither party shall be liable for or be required to indemnify the other party for any incidental, consequential, exemplary, special, punitive, or lost profit damages that arise in connection with this Agreement, regardless of the form of action (whether in contract, tort, negligence, strict liability, or otherwise) and regardless of how characterized, even if such party has been advised of the possibility of such damages.

As a condition precedent to indemnification, the party seeking indemnification will inform the other party within 5 business days after it receives notice of any claim, loss, liability, or demand for which it seeks indemnification from the other party; and the party seeking indemnification will cooperate in the investigation and defense of any such matter.

**24) Limitations; Disclaimers; Exclusive Remedies**

**AS-IS / AS-AVAILABLE.** THE PLATFORM AND ALL INFORMATION, SERVICES, PROGRAMS, SOFTWARE, AND MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND MAY INCLUDE ERRORS OR OMISSIONS. BURNETTALENTNOW DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COURSE OF DEALING/USAGE, AND ANY IMPLIED WARRANTIES UNDER THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT.

**Operation/Security.** BurnettTalentNOW does not warrant uninterrupted or error-free operation or that downloads are free of viruses or destructive features. YOUR SOLE REMEDY FOR DISSATISFACTION IS TO STOP USING THE PLATFORM.

**No Special Damages.** TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY IS LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY.

**Cap.** NOTWITHSTANDING ANY OTHER LANGUAGE IN THIS AGREEMENT, THE TOTAL LIABILITY OF BURNETTALENTNOW FOR ANY AND ALL CLAIMS RELATED TO YOUR USE OF THE PLATFORM SHALL NOT EXCEED ONE HUNDRED DOLLARS (US \$100), TO THE EXTENT PERMITTED BY LAW.

## **25) Prohibited Uses**

You may not:

- (i) use the Platform for illegal or unauthorized purposes;
- (ii) reproduce, resell, distribute, scrape, or reverse engineer the Platform;
- (iii) upload malware/spam;
- (iv) act as a recruiter/staffing intermediary without express written authorization;
- (v) misuse or circumvent Platform controls.

BurnettTalentNOW may suspend/terminate for any violation.

## **26) Confidentiality**

Both parties may receive Confidential Information (including pricing, business, technical, personal, compliance, or competency documentation). Each will protect it, use it only to perform this Agreement, limit disclosure to those with a need to know under confidentiality obligations, and comply with law. Injunctive relief is available for breaches.

## **27) Data Privacy**

- Both parties are independent data controllers.
- Each must comply with data protection and privacy laws (e.g., Texas Identity Theft Enforcement and Protection Act).
- Client shall not use data obtained through the Platform for other purposes.
- Client must notify BurnettTalentNOW of any breach within 48 hours.

## **28) Compliance; Nondiscrimination; Accrediting Standards**

Parties will comply with all applicable laws and, where applicable, accrediting standards. No discrimination based on protected classes (e.g., race, color, religion, sex, national origin, age, disability, sexual orientation, military status).

Client is responsible for lawful use/handling of personnel files and background checks (e.g., FCRA).

## **29) Independent Contractor; Subcontractors**

BurnettTalentNOW provides services as an independent contractor. Nothing creates a partnership, joint venture, franchise, or employment relationship between the parties. BurnettTalentNOW may use affiliates/subcontractors (including to provide Workers/technology).

## **30) Notices & Communications**

BurnettTalentNOW may communicate by email or Platform postings; such communications satisfy any "written" requirement. Client must keep contact info current and regularly review Platform notices.

### **Legal Notices to BurnettTalentNOW:**

BurnettTalentNOW (d.b.a. of The Burnett Companies Consolidated, Inc.)  
9800 Richmond Ave, Suite 800  
Houston, TX 77042

### **31) Claims Window; Governing Law**

**Claim Window:** Any Client claim must be submitted in writing within 30 days of occurrence or is unenforceable.

**Governing Law:** Texas law governs, without regard to its conflict-of-law rules.

### **32) Arbitration; Class/Collective Waiver**

**Binding Arbitration.** Any and all claims arising out of or relating to this Agreement or the Platform shall be resolved exclusively by binding arbitration (American Arbitration Association, Commercial Rules) in Harris County, Texas. The arbitrator may grant any relief a court could grant and may adjudicate dispositive motions. Discovery shall be sufficient to fairly arbitrate claims/defenses. The prevailing party is entitled to reasonable attorneys' fees and costs.

**Carve-Outs Required by Law.** To the extent required by law (e.g., the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act), claims related to sexual assault/harassment proceed per applicable law unless voluntarily arbitrated post-dispute.

**Class/Collective Waiver.** NO claim may be pursued as a class, collective, or representative action; only on an individual basis. If a representative claim is non-waivable by law, it shall be arbitrated on a representative basis only if and to the extent required by law.

This section is intended to benefit and may be enforced by BurnettTalentNOW, its affiliates, officers, directors, employees, agents, insurers, clients, and subcontractors.

### **33) Term; Termination; Suspension; Force Majeure**

**Term:** Effective upon acceptance and continues until terminated.

**Convenience:** Either party may terminate on 30 days' written notice (assignments then in progress may continue to completion unless BurnettTalentNOW determine otherwise).

**For Cause:** Either party may terminate for uncured material breach on 10 days' written notice (immediate if incapable of cure). BurnettTalentNOW may also immediately suspend/terminate for fraud, non-payment, security risk, or unlawful conduct.

**Force Majeure:** BurnettTalentNOW are not liable for failure/delay due to events beyond reasonable control (e.g., labor disputes, outages, pandemics, disasters, war, government action).

### **34) Assignment**

Client may not assign this Agreement without prior written notice to us; BurnettTalentNOW may assign/transfer to affiliates, successors, or in connection with corporate transactions. This Agreement binds permitted successors/assigns.

### **35) Miscellaneous**

- **Severability:** Invalid terms are modified to reflect original intent to the extent permitted; the rest remains enforceable.
- **Survival:** Provisions intended to survive (including payment, confidentiality, insurance, indemnity, limitations, arbitration, conversion fee) shall survive termination.

- **Incorporation by Reference:** Any addenda, schedules, or Platform-posted terms expressly referenced are incorporated.
- **Advice of Counsel:** Each party had the opportunity to consult counsel; no rule of strict construction against a drafter applies.
- **Waiver:** Failure to enforce any provision is not a waiver.
- **Authority:** Each signatory (or acceptor by clickwrap) has authority to bind its party.
- **Headings:** For convenience only.
- **Counterparts/E-Signatures:** Electronic acceptance/signatures are valid and enforceable.
- **Order of Precedence:** If any conflict exists among Platform screens, FAQs, or other materials, this Agreement controls; within this Agreement, the Conversion Fee clause in §21 controls any contrary statement regarding service credits or fee structure.

### **Click-Wrap Consent**

By checking the box and selecting "Create Account / Place Order," you acknowledge that you have read