

Seaton Rail Limited

Terms & Conditions

For the Supply of Safety Critical Temporary Operatives

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EMPLOYMENT BUSINESS TERMS AND CONDITIONS

BACKGROUND:

The Employment Business provides its services as an employment business, as defined by the Conduct of Employment Agencies and Businesses Regulations 2003.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Temporary Worker"	means work-seeker who is introduced to the Client by the Employment Business;
"Assignment"	means a project or period of work for which an Temporary Worker is supplied to a Client;
"AWR"	Means the Agency Workers Regulations 2010;
"Elected Assignment"	means an Assignment chosen by a Client in the event of the Engagement of a non-assigned Temporary Worker under Clause 10;
"Employment Business"	means a business which engages work-seekers under a contract of employment or a contract for services and supplies such work-seekers to client businesses for temporary assignments during which time the work-seeker shall be under the client's control;
"Engaged" / "Engagement"	means the direct employment or engagement by a Client of a Temporary Worker on either a temporary or permanent basis. This includes engagement through another employment business or via a third party and includes (but is not limited to) a contract of service, contract for service, agency, franchise or other engagement either directly or through a company of which the Temporary Worker is an employee or officer;
"Extended Assignment"	means an additional Assignment chosen by a Client in the event of the Engagement of an assigned Temporary Worker under Clause 9;
"Fees"	means the sums payable by the Client in consideration of the Services in accordance with Clause 4;
"Introduction Fee"	means the fee payable in the event of an Engagement or Third Party Engagement under Clauses 10 or 12 of these Terms and Conditions in accordance with these Terms and Conditions and the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
"Schedule A"	Means Schedule of Rates and charges in relationship to the provision of Safety Critical Operatives and Planning Services;
"Services"	means the services to be provided by the Employment Business to the Client as set out in Clause 3 and specified in Schedule A;
"Term"	means the term of the contract which shall be agreed between the Parties;
"Third Party Engagement"	means the direct employment or engagement by a third party of a Temporary Worker on either a temporary or permanent basis. This includes (but is not limited to) a contract of service, contract for service, agency, franchise or other engagement either directly or through a company of which the Temporary Worker is an employee or officer
"Timesheet"	means a timesheet supplied by the Employment Business for completion by the Temporary Worker and signing by the Client;
"Transfer Fee"	means the fee payable in the event of an Engagement or Third Party Engagement under Clauses 9 or 11 of these Terms and Conditions in accordance with these Terms and Conditions and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

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- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to these Terms and Conditions; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
 - 1.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. The Contract

Any and all business entered into by the Employment Business is subject to these Terms and Conditions and in the event of any conflict with any other terms and conditions these Terms and Conditions shall prevail unless agreed otherwise in writing by the Managing Director of the Employment Business.

3. The Services

- 3.1 The Employment Business shall provide the Services to the Client as specified in Schedule A in accordance with this Clause 3.
- 3.2 Variations to the Services shall only take effect when agreed in writing between the Parties.
- 3.3 The Services shall commence on the date agreed between the Parties, set out in Schedule A and shall continue for a period until terminated:
 - 3.3.1 by either Party upon providing 30 days prior written notice to the other; or
 - 3.3.2 in accordance with Clause 15.

4. Fees and Payment

- 4.1 The Client shall pay the Fees as set out in the Schedule A in accordance with this Clause 4.
- 4.2 The Client will pay the Employment Business for any additional services provided by the Employment Business that are not specified in Schedule A or elsewhere in these Terms and Conditions in accordance with the Employment Business's relevant rates or price lists at the time of the performance or such other price as may be agreed between the Parties. Any charge for additional services will be supplemental to Fees or other expenses.
- 4.3 In the event that the Temporary Worker incurs any reasonable expenses including, but not limited to, travel; the Client shall cover such expenses and shall be invoiced for the same.
- 4.4 The Client shall pay the Fees and other costs and expenses under sub-Clauses 4.2 and 4.3 within 30 days of receiving an invoice for the same.
- 4.5 The Employment Business reserves the right to charge interest at the rate of 8% above the Bank of England base rate of interest per annum on any invoiced sums that remain unpaid by the Client from the due date to the date of payment.
- 4.6 The Employment Business shall provide 30 days written notice of any changes to the Fees to the Client. If the Client does not accept such changes, it shall have the right to terminate in accordance with Clause 15.

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4.7 Notwithstanding the provisions of clause 4.6, the Employment Business shall not be required to provide written notice of any changes to the Fees arising as a result of compliance with the AWR.

5. The Employment Business's Obligations

- 5.1 The Employment Business shall use its best and reasonable endeavours to find suitable Temporary Workers to fill such vacancies as are notified to the Employment Business by the Client.
- 5.2 The Employment Business shall verify the identity of Temporary Workers prior to introducing them to the Client.
- 5.3 The Employment Business shall ensure that all Temporary Workers introduced to the Client have the experience, qualifications and authorisations which are required by the Client, by law or by any professional body, for the position(s) that the Client wishes to fill.
- 5.4 When proposing an Temporary Worker to the Client, the Employment Business shall inform the Client that confirmation of such matters as detailed in sub-Clause 5.3 have been obtained.
- 5.5 The Employment Business cannot guarantee to find a suitable Temporary Worker for each vacancy.
- 5.6 The Employment Business shall be responsible for Temporary Workers' remuneration and, where relevant, the deduction and payment of income tax and National Insurance contributions in accordance with the Income Tax (Earnings and Pensions) Act 2003.
- 5.7 The Employment Business shall comply with its obligations under the AWR where relevant.

6. The Client's Obligations

- 6.1 The Client shall provide to the Employment Business all information which is reasonably required for the Employment Business to provide the Services and to comply with the AWR, where relevant. The Client shall use its best and reasonable endeavours to ensure that such information is complete, accurate and up-to-date.
- 6.2 The Client shall ensure that all information provided to the Employment Business does not contain any material which could be regarded as offensive, indecent, obscene, illegal, dishonest, untruthful, defamatory or discriminatory.
- 6.3 The Client shall ensure that all information provided to the Employment Business does not contain any material which infringes the rights of any third parties (including, but not limited to, intellectual property rights).
- 6.4 The Client shall provide to the Employment Business details of the vacancies that the Client wishes to fill. The details shall include the type of work required; the commencement date; duration; hours; and location. In the event that working hours are to exceed 48 hours per week at any given time, the Client must inform the Employment Business prior to such work being undertaken.
- 6.5 The Client shall provide to the Employment Business details of the training, qualifications and other authorisations required by law, the Client and any professional body for the vacancies.
- 6.6 The Client must inform the Employment Business of any health and safety risks or requirements of the vacancies the Client wishes to fill, as well as the action taken by the Client to minimise and control such risks.
- 6.7 In the event that any relevant information changes following the submission of that information to the Employment Business, the Client shall inform the Employment Business immediately, supplying appropriately updated information.
- 6.8 The Client shall pay all sums due under these Terms and Conditions.
- 6.9 The Client shall provide adequate levels of supervision to the Temporary Worker in order to enable the Temporary Worker to perform to the Client's satisfaction and to ensure suitable standards of workmanship.
- 6.10 The Client shall, to the extent required, comply with all relevant legislation and regulations including, but not limited to, the Health and Safety at Work Act; the Working Time Regulations; the Equality Act 2010 and the Agency Workers Regulations 2010.
- 6.11 In addition to the legislation and regulations detailed in sub-Clause 6.10, the Client shall comply with any and all relevant industry codes of practice.

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7. Timesheets

- 7.1 The Employment Business shall require Timesheets to be completed by the Temporary Worker in order to verify the number of hours worked by the Temporary Worker.
- 7.2 In the absence of any agreement to the contrary, Timesheets shall cover a period of seven days.
- 7.3 The Client shall sign each completed Timesheet and return it to the Employment Business within three days of its completion.
- 7.4 The Client shall refer any and all disputes relating to the hours worked by the Temporary Worker or any other matters relating to the Timesheet to the Employment Business.
- 7.5 No failure by the Temporary Worker to complete Timesheets or by the Client to sign the same shall absolve the Client of the requirement to pay the Fees and other sums required by these Terms and Conditions.

8. Sickness and Absence

- 8.1 If any payments to the Temporary Worker by the Employment Business arise as a result of compliance with the AWR, the Employment Business shall invoice the client for sums equal to such other payments. The Client shall be required to pay any such invoice in accordance with the provisions of Clause 4.
- 8.2 If the Temporary Worker is absent for any reason, whether injury, illness or otherwise, the Client shall inform the Employment Business immediately of such absence including any reasons given by the Temporary Worker.

9. Engagement of Assigned Temporary Workers and Transfer Fees

- 9.1 The provisions of this Clause 9 shall apply where a Temporary Worker has been assigned to the Client.
- 9.2 Where a Temporary Worker supplied by the Employment Business either directly or pursuant to being supplied by another Employment Business is Engaged by the Client, during an Assignment or within whichever is the longer of either:
 - 9.2.1 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the first Assignment for the purposes of this Clause 9); or
 - 9.2.2 8 weeks from the day after the last day the Temporary Worker worked on an Assignment, the Client shall be liable to either an Extended Assignment or a Transfer Fee. The Client and the Employment Business shall agree upon the length of such an Extended Assignment or the amount of such a Transfer Fee.
- 9.3 If the Client wishes to take the Temporary Worker on an Extended Assignment under sub-Clause 9.2, it shall be required to provide at least seven days written notice ahead of the Engagement. Failure to provide such notice shall result in the Client being required to pay a Transfer Fee.
- 9.4 In the event that the Parties do not agree upon the length of an Extended Assignment or the sum of a Transfer Fee the following shall apply:
 - 9.4.1 The Extended Assignment shall continue for a period of 8 weeks during which the Client shall continue to pay the Fees normally payable for an Assignment as set out in Clause 4; or
 - 9.4.2 The Transfer Fee shall be calculated as 17.5% of the remuneration payable to the Temporary Worker during the first twelve months of the Engagement or, where the remuneration to be paid is not known, the actual rate last supplied multiplied by 250.
- 9.5 In the event that the Engagement terminates earlier than anticipated, no refund shall be payable of any Transfer Fee paid by the Client to the Employment Business.

10. Engagement of non-assigned Temporary Workers

- 10.1 The provisions of this Clause 10 shall apply where a Temporary Worker has been introduced but not Assigned to the Client.
- 10.2 Where an Temporary Worker who is introduced to the Client but not Assigned is subsequently

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engaged by the Client either directly or pursuant to being supplied by another employment business within 6 months of the date of the introduction, the Client shall either be required to take the Temporary Worker on an Elected Assignment or to pay an Introduction Fee. The Client and Agent shall agree upon the length of such an Elected Assignment or the amount of such an Introduction Fee.

- 10.3 If the Client wishes to take the Temporary Worker on an Elected Assignment under sub-Clause 10.2, it shall be required to provide at least 7 days written notice ahead of the Engagement. Failure to provide such notice shall result in the Client being required to pay an Introduction Fee.
- 10.4 In the event that the Parties do not agree upon the length of an Elected Assignment or the sum of a Transfer Fee the following shall apply:
 - 10.4.1 The Elected Assignment shall continue for a period of 8 weeks during which the Client shall continue to pay the Fees normally payable for an Assignment as set out in Clause 4; or
 - 10.4.2 The Introduction Fee shall be calculated as 17.5% of the remuneration payable to the Temporary Worker during the first 12 months of the Engagement or, where the remuneration to be paid is not known, the actual rate last supplied multiplied by 250.
- 10.5 In the event that the Engagement terminates earlier than anticipated, no refund shall be payable of any Introduction Fee paid by the Client to the Employment Business.

11. Third Party Engagement of Assigned Temporary Workers

- 11.1 The provisions of this Clause 11 shall apply where a Temporary Worker has been assigned to a Client and that Temporary Worker is introduced to a third party resulting in the subsequent Third Party Engagement of the Temporary Worker.
- 11.2 Where an Temporary Worker Assigned to the Client is introduced to a third party and such introduction results in the Third Party Engagement of the Temporary Worker, during an Assignment or within whichever is the longer of either:
 - 11.2.1 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the first Assignment for the purposes of this Clause 11); or
 - 11.2.2 8 weeks from the day after the last day the Temporary Worker worked on an Assignment, the Client shall be required to pay a Transfer Fee, the amount of which shall be agreed upon between the Client and the Employment Business.
- 11.3 In the event that the Parties do not agree upon the sum of the Transfer Fee, it shall be calculated as 17.5% of the remuneration payable to the Temporary Worker during the first 12 months of the Third Party Engagement or, where the remuneration to be paid is not known, the actual rate last supplied multiplied by 250.
- 11.4 In the event that the Third Party Engagement terminates earlier than anticipated, no refund shall be payable of any Transfer Fee paid by the Client to the Employment Business.

12. Third Party Engagement of non-assigned Temporary Workers

- 12.1 The provisions of this Clause 12 shall apply where a Temporary Worker has been introduced but not Assigned to a Client and that Temporary Worker is introduced to a third party by the Client resulting in the subsequent Third Party Engagement of the Temporary Worker.
- 12.2 Where an Temporary Worker who is introduced to a Client but not Assigned is introduced to a third party and subsequently engaged by that third party within 6 months of the date of the introduction, the Client shall be required to pay an Introduction Fee, the amount of which shall be agreed upon between the Client and the Employment Business.
- 12.3 In the event that the Parties do not agree upon the sum of the Introduction Fee, it shall be calculated as 17.5% of the remuneration payable to the Temporary Worker during the first 12 months of the Third Party Engagement or, where the remuneration to be paid is not known, the actual rate last supplied multiplied by 250.
- 12.4 In the event that the Third Party Engagement terminates earlier than anticipated, no refund shall be payable of any Introduction Fee paid by the Client to the Employment Business.

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13. Liability

- 13.1 With the exception of death or personal injury the Employment Business shall not be liable or responsible for any loss or damages of any nature whether direct or indirect including any loss of profits or any consequential damages suffered or incurred by the Client as a result of the introduction of an Temporary Worker to the Client by the Employment Business, the Assignment of an Temporary Worker Introduced by the Employment Business or the failure of the Employment Business to introduce any Temporary Worker to the Client.
- 13.2 The Employment Business shall not be liable for any loss or damages of any nature whether direct or indirect including any loss of profits or any consequential damages suffered or incurred by the Client as a result of the Temporary Worker's negligence, misconduct, dishonesty, lack of qualifications, or lack of skills.
- 13.3 Temporary Workers are under the direct control of the Client during the Assignment. The Client is therefore responsible for any and all acts or omissions of the Temporary Worker which occur in the course of the Assignment.

14. Indemnity

- 14.1 The Client shall indemnify the Employment Business against any claim, loss, damage, proceedings, settlement, costs or expenses which may be paid to a third party arising out of any matter relating to the subject matter of these Terms and Conditions in respect of the Client's breach hereof.
- 14.2 The indemnity set out in sub-Clause 14.1 shall apply provided that in all cases the Employment Business shall:
 - 14.2.1 Notify the Client as soon as is reasonably possible of any claim, loss or damage;
 - 14.2.2 Consult with the Client as to the action to be taken in dealing with any such matters; and
 - 14.2.3 Make no agreement with any third party for the payment of any sum without the prior agreement of the Client, such agreement not to be unreasonably withheld.

15. Termination

- 15.1 Subject to the remaining provisions of this Clause 15, the Contract shall continue for the Term which shall be agreed between the Parties prior to the start of the Assignment.
- 15.2 The Client may terminate the Contract and end the Assignment prior to the end of the Term if it considers that the Temporary Worker is performing unsatisfactorily.
- 15.3 Either Party has the right to terminate the Contract immediately if the other:
 - 15.3.1 has committed a material breach of these Terms and Conditions, unless such breach is capable of remedy, in which case the right to terminate will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or
 - 15.3.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 15.4 In the event of termination for default committed by the Client, all payments required under these Terms and Conditions shall become due and immediately payable.
- 15.5 Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of the Contract shall survive termination under this Clause 15.

16. Force Majeure

Neither Party to these Terms and Conditions shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

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17. Notices

- 17.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 17.2 Notices shall be deemed to have been duly given:
 - 17.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
 - 17.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 17.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 17.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 17.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

18. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions. The remainder of these Terms and Conditions shall be valid and enforceable.

19. No Waiver

The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

20. Dispute Resolution (Arbitration)

- 20.1 Where any dispute or difference relating to these Terms and Conditions arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.
- 20.2 The arbitrator shall be agreed by the Parties or, in the event of failure to agree, shall be appointed by the president for the time being of the Law Society of England and Wales.
- 20.3 The arbitration shall take place in East Yorkshire and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.
- 20.4 The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.
- 20.5 The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall co-operate fully with the arbitrator to achieve this objective.
- 20.6 The Parties shall share the fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.

21. Law and Jurisdiction

- 21.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 21.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

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