



## EXPRESS RAIL SERVICES

### TERMS OF BUSINESS FOR THE INTRODUCTION OF PERMANENT OR FIXED TERM CONTRACT STAFF

#### 1. DEFINITIONS

1.1 In these Terms the following definitions apply:

- “Agency”** means Express Rail Services which is a trading name of Berry Recruitment Limited (registered company no 6491266.) of Porters House, 4 Porters Wood, St Albans, Hertfordshire, AL3 6PQ (“the Agency”)
- “Cancellation Fee”** means the fee payable by the Client to the Agency when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 5.1;
- “Candidate”** means the person Introduced by the Agency to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Agency’s own staff;
- “Client”** means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to which the Candidate is introduced;
- “Engagement”** means the engagement, (including the Candidate’s acceptance of the Client’s offer), employment or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Candidate is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
- “Introduction”** means (i) the passing to the Client of a curriculum vitae or information which identifies the Candidate or (ii) the Client’s interview of a Candidate (in person, by telephone or by any other means), following the Client’s instruction to the Agency to search for a Candidate; and, in either case, which leads to an Engagement of the Candidate; and “Introduces” and “Introduced” shall be construed accordingly. In so far as the Candidate is a member of the Agency’s own staff an Introduction shall be deemed to have occurred on any and each communication whether direct or indirect between the staff member and the Client following the Client’s instruction to the Agency to search for a Candidate;
- “Introduction Fee”** means the fee payable by the Client to the Agency for an Introduction resulting in an Engagement;
- “Remuneration”** includes annual gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Candidate for services provided to or on behalf of the Client or any third party. If the Candidate does not work for 12 months then the Remuneration shall be calculated as if the Candidate had done.

**“Replacement Candidate”** means any Candidate Introduced by the Agency to the Client to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first 12 weeks of Engagement;

**“Vulnerable Person”** means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen.

1.2 Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.

1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

2.1 These terms of business and the attached Schedule(s) (**“the Terms”**) constitute the contract between the Agency and the Client for the introduction of permanent or contract staff (to be engaged directly by the Client) and are deemed to be accepted by the Client by virtue of an Introduction or the Engagement of a Candidate, or the passing by the Client of any information about a Candidate to any third party following an Introduction.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Agency, these Terms prevail over any other terms of business or purchase conditions (or similar) put forward by the Client.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Agency and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after such varied terms shall apply.

2.4 The Agency acts as an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

## 3. NOTIFICATION AND FEES

3.1 The Client agrees to:

3.1.1 notify the Agency immediately of the terms of any offer of an Engagement which it makes to the Candidate;

3.1.2 notify the Agency immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Agency of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Agency; and

3.1.3 pay the Introduction Fee, to be calculated in accordance with the provisions of this clause 3, by the due date for payment in clause 3.7.

3.2 The Introduction Fee calculated in accordance with clause 3.3 below is payable if the Client Engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).

- 3.3 The Introduction Fee is calculated in accordance with the attached Fee Structure Schedule 1 based on the Remuneration applicable during the first 12 months of the Engagement.
- 3.4 Where the actual Remuneration is not known, the Agency will charge an Introduction Fee calculated in accordance with clause 3.3 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied to the Agency by the Client and/or comparable positions in the market generally.
- 3.5 Where prior to the commencement of the Engagement the Agency and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction Fee will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 3.3 had the Candidate first been Engaged for 12 months or more.
- 3.6 The Clients obligations under this clause 3 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 3.7 The Introduction Fee shall be payable within 14 days of the date of the Agency's invoice which shall be rendered once the Candidate commences the Engagement. In the event of non payment of the invoice by the Hirer within 14 days the Client will;-
- 3.7.1 indemnify and keep indemnified, on the indemnity basis, the Agency in respect of all costs, including legal costs, incurred by the Agency in respect of the recovery of the invoice whether they are incurred before or after judgment.
- 3.7.2 lose the right to any discount or reduced Introduction Fee agreed between the Agency and the Client and in which circumstances the Introduction Fee that shall be payable is the Agency's standard fees as set out in Schedule 1 which shall be payable immediately.
- 3.8 VAT is charged at the standard rate on all fees.
- 3.9 The Agency reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 3.10 In the event that any Agency staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Agency (or within 3 months of leaving the Agency), the Client shall be liable to pay an Introduction Fee to the Agency calculated in accordance with clause 3.3.
- 3.11 Without prejudice to the above provisions, in the event that any Charges are not paid by the due date and therefore become overdue, all and any Charges incurred by the Hirer in respect of the Agency Worker or otherwise become immediately due to the Employment Business as a debt.

#### **4. REFUNDS**

- 4.1 If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (except in circumstances where the Candidate is made redundant) before the expiry of 12 weeks from the date of commencement of the Engagement; then subject to the terms of clause 4.2: the Agency will

refund the Introduction Fee in accordance with the accompanying Scale of Rebates set out in Schedule 1 which is attached to these Terms.

4.2 In order to qualify for the refund set out in clause 4.1, then:

4.2.1 the Client must comply with the provisions of clause 3.1 and must notify the Agency in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement; and

4.2.2 The Client must exclusively give the Agency 4 weeks from the date of notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Client is seeking to fill. If after 4 weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of 12 weeks from the date of commencement of the Engagement the Client will then be eligible for a refund, subject to the rest of this clause 4.

4.3 For the purposes of this clause 4 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.

4.4 In circumstances where clause 3.5 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.

4.5 If subsequent to the Client receiving a refund the Candidate is re- Engaged within a period of 6 calendar months from the date of termination then the refund shall be repaid to the Agency. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

## 5. CANCELLATION FEE

5.1 If, after an offer of Engagement has been made to the Candidate, the client decides for any reason to withdraw it prior to the Candidate accepting the Engagement, the client shall be liable to pay the Agency a Cancellation fee, which shall be calculated as follows: £400 where the annual Remuneration is £20,000 or less and 2% of the Remuneration where the annual Remuneration is £20,001 or more.

## 6. INTRODUCTIONS TO THIRD PARTIES

6.1 Introductions of Candidates are confidential. If a Client discloses a Candidate's details to a third party, that will be deemed to be a "**Third Party Introduction**". If that Third Party Introduction results in an Engagement of the Candidate by the third party within 6 months of the Agency's Introduction of the Candidate to the Client, then the Client will be liable to the Agency for payment of an Introduction Fee in accordance with clause 3.3. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 4 in any circumstances.

## 7. SUITABILITY CHECKS

7.1 The Agency endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to

7.1.1 ensure that it would not be detrimental to the interests of either the Client or the Candidate;

7.1.2 ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body; (and)

- 7.1.3 confirm that the Candidate is willing to work in the position and
  - 7.1.4 obtain confirmation of the Candidate's identity; and that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body
- 7.2 Notwithstanding clause 7.1 the Client shall be obliged to satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
- 7.2.1 taking up any references provided by the Candidate before Engaging the Candidate;
  - 7.2.2 checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
  - 7.2.3 the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
  - 7.2.4 satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 7.3 To enable the Agency to comply with its obligations under 7.1 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the following:
- 7.3.1 the type of work that the Candidate would be required to do;
  - 7.3.2 the location and hours of work;
  - 7.3.3 the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
  - 7.3.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 7.3.5 the date the Client requires the Candidate to commence the Engagement;
  - 7.3.6 the duration or likely duration of the Engagement;
  - 7.3.7 the minimum rate of Remuneration, expenses and other benefits that would be offered;
  - 7.3.8 the intervals of payment of Remuneration; and
  - 7.3.9 the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 7.4 Where the Candidate is introduced for a position which involves working with, caring for or attending a Vulnerable Person the Agency shall, in addition to the obligations in clause 7.1, take reasonably practicable steps to:
- 7.4.1 obtain confirmation of the Candidate's identity;

- 7.4.2 obtain confirmation that the client has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and
- 7.4.3 obtain and offer to provide copies to the Client of the two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Agency has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

## **8. INFORMATION TO BE PROVIDED**

- 8.1 When the Agency Introduces a Candidate to the Client the Agency shall inform the Client that they have obtained confirmation of the matters set out in clause 7.1 (and in the case of a position which involves working with Vulnerable Persons the matters in clause 7.4). Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

## **9. CONFIDENTIALITY AND DATA PROTECTION**

- 9.1 All information relating to a Candidate is confidential and subject to the Data Protection Act 1998 ("DPA") and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the DPA in receiving and processing the data at all times. In addition information relating to the Agency's business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

## **10. LIABILITY**

- 10.1 The Agency shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Client arising from or in any way connected with the Agency seeking a Candidate for the Client or from the Introduction to or Engagement of any Candidate by the Client or from the failure of the Agency to introduce any Candidate. For the avoidance of doubt, the Agency does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

## **11. NOTICES**

- 11.1 All notices which are required to be given in accordance with this Agreement shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

## 12. SEVERABILITY

12.1 If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provisions shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

## 13. GOVERNING LAW AND JURISDICTION

13.1 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

\_\_\_\_\_  
***Signed for and on behalf of the Client***

\_\_\_\_\_ [print name here]

**I confirm I am authorised to sign these Terms for and on behalf of the Client.**

\_\_\_\_\_ **“the Client”**

\_\_\_\_\_  
Date

## Schedule 1

### Table of Introduction Fees for Permanent and Fixed Term Contract Staff

Table Of Fees (%)				
Gross Annual Remuneration	Up to £25,000	£25,001 - £30,000	£30,001 - £50,000	£50,001 plus
% Fee payable	20	22.5	25	30

All fees subject to VAT

Introduction Fees for fixed term contract staff are calculated as above adjusted pro rata for the contract period.

All Introduction Fees are subject to a minimum fee of £2,000 plus VAT.

### Table Of Introduction Fee Rebates

Where the Candidate ceases working for the Client during the first 84 days of the Engagement (except where the Candidate is or will be made redundant, or in the circumstances set out in clause 5.1), a refund of the Introduction Fee shall be paid to the Client in accordance with the Scale of Rebate set out below, subject to the conditions in Clause 3.1, 4.1 and 4.2.

Rebate Scale ("Scale of Rebate")	
Employment Period (Days)	Percentage (%) Rebate
Up to 14	100*
15-35	50
36-70	25
71-84	10

\*Less £350 (Plus VAT) Administration Fee

The Scale of Rebate only applies in the event that the Client complies with the provisions 3.1, 4.1 and 4.2 of these Terms.