

## TERMS AND CONDITIONS

### 1. DEFINITIONS:

**Agreement** means the agreement between the Client and us for the supply of any Services in accordance with these Terms;

**Anti-Bribery Law** means the Bribery Act 2010 and all other applicable anti-bribery laws and regulations;

**Anti-Slavery and Human Trafficking Law** means the Modern Slavery Act 2015 and all other applicable anti-slavery and human trafficking laws and regulations;

**Booking** means an agreed booking for the supply of any Services in accordance with the booking process set out in clause 3;

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Client** means the person, firm, partnership, organisation, public sector body or company to which the Services are provided under these Terms;

**Client Default** means any act or omission by the Client or failure by the Client to perform any relevant obligation under, or in connection with, the Agreement;

**Client Materials** means any materials or documents provided by the Client in connection with its receipt of any Services;

**Client Equipment** means any plant or equipment provided by the Client in connection with its receipt of any Services;

**Client Premises** means any premises owned by, leased or licensed to, or otherwise occupied by, the Client;

**Commencement Date** means the date of commencement of the Agreement in accordance with clause 2.1;

**Confidential Information** means any information, whether marked confidential or not, which might reasonably be considered to be confidential in nature concerning a Party's business, affairs, customers, clients or suppliers;

**Connected Party** means any (i) holding, subsidiary, associated or connected company of the Client (ii) organisation or business within the same purchasing group as the Client or (iii) organisation or business which is demonstrably connected to the Client through common ownership, management or control;

**Control** has the meaning given in section 1124 of the Corporation Tax Act 2010 and the expression "**change of control**" has the meaning construed accordingly;

**Course** means a training course event, being either training or assessment provided by Fusion in relation to an agreed Booking;

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**Course Information Sheet and Joining Instructions** means the course information sheet and associated joining instructions for a Course, which may include training content, on-site or online training details, physical and online access requirements, personal protective equipment requirements (as applicable), and which will include joining instructions and any eligibility criteria for the Course that may apply to Delegates;

**Course Materials** means any materials or documents used or provided by us (or on our behalf) in connection with the delivery of a Course;

**Data Protection Legislation** means (i) the Data Protection Act 2018, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the Data Protection Act 2018 or the GDPR insofar as it is applicable to the United Kingdom;

**Delegate** means a natural person booked onto a Course under a Booking by the Client (or on the Client's behalf) and may include the Client, the Client's employees or contractors, or any natural person sponsored by the Client (as applicable);

**Fees** means the fees payable to us for the supply of any Services in accordance with clause 4;

**Fusion** means Fusion People Limited t/a Fusion People Training, registered in England & Wales under number 04873626 at 2<sup>nd</sup> Floor, 3700 Parkway, Solent Business Park, Whiteley, Hampshire. PO15 7AW. ("we" or "us")

**Fusion Equipment** means any materials, plant, equipment and documents of ours or our subcontractors (as applicable) provided to a Delegate for the purposes of training or assessment at our own or Client Premises to supply any Services;

**IPR** means all copyright, trademarks, database rights, design rights, patents and other intellectual property of any type existing anywhere in the world, whether capable of registration or not, together with any registration rights in the same;

**Online Booking System** means our online booking system available at <https://www.fusionpeople.com/training/>;

**NSAR** means the National Skills Academy for Rail

**Party** or **Parties** means the Client and us individually or together (as applicable);

**Restricted Party:** (i) the Client, Delegate or Fusion (ii) any holding, subsidiary, associated or connected company of the Client or Fusion, (iii) any employee of Fusion involved in provision of the Services

**Restricted Period:** means the 12 months from completion of the most recent Services to or by a Restricted Party.

**Services** means the delivery of a Course, and Assessment and any ancillary services connected with it by us (or on our behalf) as specified under a Booking; and

**Shared Data** means personal data and special/sensitive personal data within the meaning of the Data Protection Legislation which relates to a Delegate and which is shared between the parties pursuant to these Terms;

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**Terms** means these Terms and Conditions in force as at the Commencement Date.

1.2 A reference to a party shall mean either Fusion or the Client as applicable and a reference to the parties shall mean both Fusion and the Client.

1.3. The clause headings used in these Terms shall not affect the interpretation of any clause.

1.4. Unless otherwise indicated by the context (i) references to the singular include the plural and vice-versa (ii) references to the masculine include the other genders and vice-versa.

1.5. Any reference to legislation includes an amendment or re-enactment of such legislation from time to time and any secondary legislation which may be made under such legislation.

## **2. FORMATION & BASIS OF AGREEMENT**

2.1. If the Client has not signed these Terms or otherwise confirmed acceptance of the Terms in writing, the Client shall be deemed to have accepted the Terms by (i) completing a booking form either in the format as set out above or via the Online Booking System, or (ii) a Delegate attending or undergoing a Course, whichever occurs first following receipt of these Terms.

2.2. Once accepted in accordance with clause 2.1, these Terms shall apply to all Services provided by Fusion until terminated in accordance with clause 15.

2.3. No variation to these Terms shall be effective unless agreed in writing between a representative of the Client and a director of Fusion. Nothing in this clause shall prevent Fusion from updating and issuing a revised version of these Terms from time to time.

2.4. Unless otherwise agreed in writing by a director of Fusion, these Terms form the entire agreement between the parties for the provision of Services to the exclusion of any terms proposed or issued by the Client.

## **3. BOOKING**

3.1. Booking must be made either via the form as attached or via the Online Booking System.

3.2. Once a Booking is made, confirmation of acceptance of that Booking will be provided in writing by Fusion along with any joining instructions.

## **4. FEES & PAYMENT**

4.1. Fees will be as detailed at the time of making the Booking, confirmed in writing by Fusion. A copy of current course and assessment fees are both detailed on our Online Booking System and can be provided by our training team on request.

4.2. Payment for all Services must be made at the time of booking unless otherwise agreed in writing by Fusion. For the avoidance of doubt, all Fees due must be paid in full prior to commencement of any Services.

4.3. Any expenses incurred by Fusion either in the delivery of the Services or as a result of cancellation or non-attendance of the Delegate will be charged in full to the Client. Payment shall be due within 7 days of the invoice date.

## 5. CANCELLATION

5.1. Cancellation: Should a cancellation be requested by the Client or Delegate for any reason, the following charges will apply:

<i>Cancellation Notice prior to course date</i>	<i>Fee due</i>
2 working days or less	100% of the course fee
5 working days or less	50% of the course fee
10 working days or less	25% of the course fee
Over 10 working days	No Charge

5.2. For the avoidance of doubt, should a Delegate fail to attend a Booking, no refund will be due.

5.3. Should a cancellation be made by Fusion other than for reasons of Force Majeure and 16.8 of these Terms, an alternative date will be offered for the Services to be delivered at no further cost. If a suitable alternative date cannot be agreed between the parties, a credit note to the full amount of the Fees relating to the specific Booking shall be issued.

## 6. FUSION OBLIGATIONS

6.1. We will use reasonable endeavours to deliver any Services in accordance with these Terms and the criteria as set out by NSAR for each competency

6.2. We will supply all services with the level of skill and competency reasonably expected of an NSAR Accredited Trainer or Assessor

6.3. We will make reasonable endeavours to meet any agreed dates for delivery of the Services, however, we reserve the right to adjust a Booking date where circumstances dictate. Such circumstances can include, but are not limited to, minimum course attendance levels, particularly in relation to (but not exclusively) clause 16.8, prevailing weather conditions, track access, equipment or trainer availability.

6.4. In the event that a course date is adjusted by Fusion, should the Delegate(s) be unable to attend on the revised date, the provisions of clause 5.3 shall apply.

## 7. CLIENT OBLIGATIONS

7.1 The Client will only send Delegates for a Booking;

- (i) for whom they are the current Primary Sponsor under the Sentinel scheme
- (ii) who have a current in-date Drug & Medical screening record
- (iii) who are suitable for and have the aptitude to undertake the duties of the role for which the Services are to be provided
- (iv) who have read and understood any pre-course requisites as stated on the joining instruction.

For the avoidance of doubt, Fusion reserves the right to reject any Delegate either at the point of Booking or on attendance should any of the above conditions not be met.

7.2 The Client shall:

- i) raise any queries or concerns within 48 hours of receipt of the joining instructions
- ii) adhere to all requirements of law, regulations, joining instructions or these Booking conditions either in verifying the suitability of their Delegates or in receiving any Services
- iii) where applicable, provide reasonable access and any such facilities, information (including in relation to Health & Safety Law and any know risks), equipment and materials as are necessary for the provision of Services on Client Premises
- iv) ensure that all information provided in relation to any Delegate is current and accurate at all times. For the avoidance of doubt, should any information change prior to a Booking which would impact the Delegate's ability to receive the Services, it is the responsibility of the Client to notify Fusion prior to the Course taking place.
- v) warrant that each Delegate shall attend the Course in accordance with joining instructions.

## 8. INTELLECTUAL PROPERTY

8.1 The Client acknowledges and agrees that any Intellectual Property generated in the provision of the Services whether by Fusion or any Delegate shall remain the sole property of Fusion. The Client further acknowledges and agrees that no Course Materials may be copied or reproduced without the prior written consent of Fusion.

8.2 Where provided by the Client, the Client shall grant full license to Fusion to use, adapt and reproduce any such Client Materials as shall be necessary for the delivery of the Services on Client premises in compliance with all laws and regulations.

## 9. COMPLIANCE WITH RELEVANT LAWS

9.1 Each party will conduct itself in a professional manner in adherence to all relevant laws including but not restricted to Anti-Bribery & Corruption Law, Modern Slavery & Human Trafficking, Environmental Law, Health & Safety, Fraud and Data Protection.

## 10. DATA PROTECTION

10.1 Each party will comply fully with all Data Protection law in all processing activities relating to provision of the Services

10.2 Fusion and the Client understand that they shall each act as independent data controllers in respect of any Shared Data. Each party shall

- (i) control and process the Shared Data in accordance with the Data Protection Legislation
- (ii) provide any Delegate with notice of their data processing activities compliant with Data Protection Legislation and Fusion shall assist the Client in this regard if requested to do so
- (iii) take appropriate technical and organisational measures to safeguard the security of Shared Data under their control
- (iv) co-operate with the other party in respect of any regulatory enquiry or investigation relating to the Shared Data and
- (v) co-operate with the other party where any Delegate seeks to exercise their statutory

rights in respect of the Shared Data.

## 11. BRIBERY & HUMAN TRAFFICKING

11.1. The Client and Fusion warrant that they shall:

- (i) Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (ii) Promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with the performance of these Terms; and
- (iii) Take reasonable steps and carry out appropriate checks to ensure that their respective businesses and business supply chains are free of slavery and human trafficking.

## 12. CONFIDENTIALITY

12.1 Neither party may at any time, without the prior written consent of the other party, disclose any Confidential Information of the other party, except as permitted under clause 12.2

12.2 Either party may disclose the other's Confidential Information:

- (i) to its employees, representatives, officers, agents, delegates, consultants and subcontractors to the extent required to effectively deliver the Services
- (ii) as required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that the disclosing party provides the affected party with as much notice as practicable.

## 13. NON-SOLICITATION

13.1 Save through open advertising, neither party shall, without the prior written consent of the other party, directly solicit for employment any person employed or engaged directly by the other party during the term of this Agreement and for a period of 12 months from the termination or expiry of this Agreement. Any breach of this Clause 13.1 shall be subject to a charge equivalent to 30% of the solicited person's annual salary

## 14. LIMITATION OF LIABILITY

14.1 Whilst Fusion will use reasonable endeavours to ensure that any Services delivered to the Client meets the requirements specified by the Client and NSAR, Fusion gives no warranty, whether express or implied, that any Delegate will achieve the standard required to pass an Assessment.

14.2. Fusion shall not be liable to the Client for any indirect or consequential losses or for any loss of profit, loss of business or loss of goodwill howsoever arising.

14.3. Subject to clause 14.4, the aggregate liability of Fusion to the Client in respect of any claim or series of claims arising out of or in connection with these Terms and whether arising in contract, tort (including negligence) or otherwise, is limited to the Fee paid by the Client to Fusion in respect of the Services in relation to which such claim arises or, if there was no Booking or if the claim does not relate to the Services, the sum of £5,000.

14.4. Fusion does not limit or exclude liability for death or personal injury arising from

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its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.

14.5. Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.

14.6. Any claim which the Client may bring against Fusion in relation to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.

14.7. The Client shall indemnify Fusion against all losses, damages, costs, claims (whether actual or threatened) and fees (including legal fees) suffered or incurred by Fusion as a result of the Client's breach of contract, negligence (or any other tortious act), breach of statutory duty or otherwise.

## 15. TERMINATION

15.1. Either party may terminate the Agreement by giving written notice if the other party has:

- (i) committed a serious or persistent breach of its obligations under these Terms
- (ii) undergone a change of control
- (iii) entered into any arrangement with their creditors other than in relation to solvent restructuring
- (iv) ceases, suspends or threatens to cease or suspend all or a substantial part of its business

15.2. without affecting any other right or remedy available to us, Fusion may terminate the Agreement and any Bookings without notice if:

- (i) the Client fails to pay any amount due under the Agreement by the due date
- (ii) any of the conditions set out in 15.1 (iii) or (iv) are true of the Client

15.3. On termination of the Agreement (for whatever reason) the Client will:

- (i) return all Fusion Equipment and any Course Materials already provided without delay. If not returned within 7 days, Fusion reserves the right to enter Client Premises and recover any such Materials or Equipment. For any items unrecovered thereafter Fusion will charge the Client the full value of replacements. For the avoidance of doubt, the Client shall in any case not be permitted to use any such Materials or Equipment for any purpose.
- (ii) pay any and all Fees which remain outstanding at the date of termination. Such sums shall be due immediately.

15.4. Any provision of these Terms that expressly or by implication is intended to continue in force on or after termination of the Services shall remain in full force and effect.

## 16. GENERAL PROVISIONS

16.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of Fusion.

16.2. Fusion may assign any monies owing from the Client to a third party including, without limitation, a finance or factoring company.



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16.3. Subject to clause 16.2, the parties do not intend these Terms to be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

16.4. The Client shall not deduct or set off against any sum due to Fusion under these Terms, any sum which is owed or which the Client alleges or claims is owed by Fusion to the Client, whether under these Terms or under any other agreement between Fusion and the Client.

16.5. If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the Terms, which shall continue to be valid to the fullest extent permitted by law.

16.6. Neither Party will be in breach of the Agreement, nor liable for delay in performing or failure to perform, any of its obligations under the Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

16.7. No failure or delay by a party in exercising any right or remedy under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

16.8. In relation to a Track Inductions course, any less than 4 attendees will result in cancellation or discontinuation of the course for safety reasons. Where a course has been arranged for a specific client only, it is the obligation of that specific client to assure full attendance. Where this condition is not met then the full charge for the course will apply regardless.

16.9. These Terms shall be interpreted in accordance with English law.

16.10. The parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of the Terms.



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**The Sponsor must ensure:**

- The candidate's suitability and aptitude to undertake the duties of the role for which training is to be provided
- The candidate has read and understood any pre-course requisites as stated on the joining instruction which will be sent after signed booking form has been received.

**The Candidate:**

- Proof of identity must be in one of the following: valid Passport, New style drivers licence which includes a photograph or a valid sentinel card
- The candidate must arrive on time as failure to do so may result in refusal from the course

**Facilities:**

- **Refreshment Facilities:** Tea/Coffee and a choice of sandwiches are available at all our centres free of charge
- **Disabled access:** Two of our training rooms have disabled access (Please notify us in advance if required)

**Fusion Training operate the following Policies:**

- Smoking Policy: All Fusion Training Centres are designated as No Smoking Areas
- Bullying & Harassment Policy
- Equality & Diversity Policy
- Anti-Bribery Policy
- Drugs & Alcohol
- Work safe Policy

**Admin purposes:**

Payment received	Date Received