

Apex Resources Limited Terms and Conditions of Business

THE SUPPLY OF A SELF-EMPLOYED CONSULTANCY WHO HAS OPTED OUT OF THE CONDUCT REGULATIONS (OUTSIDE IR35)

THE PARTIES

- Apex Resources Ltd (registered company no.5038793) of Swatton Barn Swindon wiltons SN4 0EU ("the **Employment Business**").
- Person, firm or company requiring the services of Apex Resources Ltd ("the **Client**") to whom the Consultancy is Introduced. For the avoidance of doubt the Client shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Consultancy is introduced.

RECITALS

- The Employment Business carries on the business of sourcing and supplying consultancies to provide services to Clients of the Employment Business. The Client has instructed the Employment Business to supply a Consultancy to provide certain services, as specified in the Client Order Confirmation ("the **Schedules**") ("the **Consultancy Services**").
- The Employment Business will introduce a Consultancy to the Client to provide the Consultancy Services to the Client on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

"**Agency Workers Regulations**" means the Agency Workers Regulations 2010;

"**Assignment**" means the Consultancy Services to be performed by the Consultancy Staff for the Client for a period of time during which the Consultancy is supplied by the Employment Business to provide the Consultancy Services to the Client;

"**Charges**" means the charges as notified to the Client at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Consultancy Fees, the Employment Business' commission, and any travel, hotel or other disbursements as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable;

"**Conduct Regulations**" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

"**Consultancy**" means the person, firm or corporate body introduced to the Client by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes Consultancy Staff and any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client and any officer, employee, worker or representative of any such third party);

"**Consultancy Fees**" means the fees payable to the Consultancy for the provision of the Consultancy Services;

"**Consultancy Staff**" means any officer, employee, worker or representative of the Consultancy supplied to provide the Consultancy Services (and, save where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Consultancy Services is assigned or sub-contracted with the prior approval of the Client);

"**Data Protection Laws**" means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

"**Engagement**" means the engagement, employment or use of the Consultancy's services or the services of any Consultancy Staff, by the Client or by any third party to whom the Consultancy and/or any Consultancy Staff have been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement or through another employment business; 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 Consultancy or Consultancy Staff or (ii) the Client's interview of a Consultancy or Consultancy Staff (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a consultancy, or (iii) the supply of a Consultancy; and, in any case, which leads to an Engagement of that Consultancy or Consultancy Staff; and "Introduces" shall be construed accordingly;

"**Introduction Fee**" means the fee payable by the Client in accordance with clause 7;

"**Losses**" means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

"**Remuneration**" (yearly salary) includes 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 taxable, (and, where applicable, non-taxable) payable to or receivable by the Consultancy or the Consultancy Staff for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount of £3000 will be added to the sums paid to the Consultancy in order to calculate the Employment Business' fee.

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

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

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE CONTRACT

2.1. This Agreement together with the **Assignment details ("Agreement")** constitutes the contract between the Employment Business and the Client for the supply of the Consultancy Services by the Employment Business to the Client, and is deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of a Consultancy or the passing of any information about the Consultancy to any third party following an Introduction.

2.2. This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.

2.3. Subject to clause 5.2 no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a Director of the Employment Business 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 which such varied terms shall apply.

2.4. The Client acknowledges that the Consultancy and the Consultancy Staff carrying out the Assignment have opted out of the Conduct Regulations and further that any person to whom the performance of the Consultancy Services has been assigned or sub-contracted has opted out of the Conduct Regulations and that none of the Conduct Regulations apply to any Assignments governed by this Agreement.

2.5. The Client acknowledges that the Consultancy may supply any of the Consultancy Staff to perform the Consultancy Services and where the Consultancy is unable to provide any part of the Consultancy Services for whatever reason the Consultancy shall be entitled to assign or sub-contract the performance of the Consultancy Services provided that the Employment Business and the Client are reasonably satisfied that the assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Consultancy Services to the required standard and that the terms of any such assignment or sub-contract contain the same acknowledgements under and obligations imposed by the agreement between the Consultancy and the Employment Business. The Client shall not unreasonably withhold or delay any approval sought for the assignment or sub-contracting of the Consultancy Services.

2.6. The Client acknowledges that the Consultancy shall be permitted to determine how it will provide the Consultancy Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Consultancy Services, subject to the Consultancy complying with any reasonable operational requirements of the Client. The Consultancy will be at liberty to determine the location at which it will provide the Consultancy Services, but where the Consultancy Services are undertaken at the Client's site, the Consultancy will comply with any reasonable requirements relating to working hours, and any other operational requirements in relation to the Client's site.

3. INFORMATION TO BE PROVIDED

to the commencement of the Assignment, or if this is not practical, upon commencement of the Assignment, the Employment Business will send to the Client the information.

4. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES

4.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week or is completed or finished before the end of a week the Client shall verify the execution of the Consultancy Services by signature of a form provided to the Client for this purpose.

4.2. Verification by the Client of the execution of the Consultancy Services constitutes acceptance by the Client that the Consultancy Services have been provided satisfactorily and in accordance with this Agreement. Failure to verify execution in writing does not affect the Client's obligation to pay the Charges in respect of the work done. In the event that the Client is dissatisfied with the work performed by the Contractor the provisions of clause 8 below shall apply.

5. CHARGES

5.1. The Client agrees to pay the Charges. VAT is payable at the applicable rate on the entirety of the Charges.

5.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client, in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.

5.3. The Charges are invoiced to the Client on a weekly basis and are payable within 14 days (unless agreed in writing by a director)

5.4. If payment is not made on the due date, Apex Resources Ltd shall exercise its statutory right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 or under such equivalent legislation

5.5. In the event of default in the payment of any Charges, Fees, Gross Remuneration (yearly salary) Fee or interest when due in accordance with this Agreement, Apex Resources Ltd may, without notice or demand, declare all Charges, Fees, Gross Remuneration (yearly salary) Fees or interest then unpaid but otherwise accrued, immediately due and payable.

5.6. The Client's obligations under this clause 5 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

6. PAYING THE CONSULTANCY

The Employment Business is responsible for paying the Consultancy Fees.

7. INTRODUCTION FEES

7.1. The Client shall be liable to pay the Employment Business an Introduction Fee where the Employment Business Introduces the Consultancy to the Client and:

7.1.1. the Client Engages the Consultancy or any Consultancy Staff other than through the Employment Business within a period of 6 months from the termination of the Assignment in respect of which the Consultancy or Consultancy Staff was supplied, or if there was no supply, within 12 months of the Introduction of the Consultancy by the Employment Business to the Client; or

7.1.2. Where the Client introduces the Consultancy to a third party and such introduction results in an Engagement of the Consultancy or any Consultancy Staff by the third party other than through the Employment Business within 6 months from the date of the introduction by the Client to the third party.

The Introduction Fee will be calculated

At 22% of the Remuneration (yearly salary) payable to the Consultancy. Where the amount of the Remuneration (yearly salary) payable to the Consultancy is not known, the Introduction Fee will be calculated by multiplying the Charges by 300.

7.2. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.

7.3. VAT is payable in addition to any Introduction Fee due.

8. TERMINATION OF THE ASSIGNMENT

A: The Assignment will terminate when the Client confirms that the Consultancy Services have been completed. Either party may terminate the Assignment earlier by giving to the other party in writing the period of notice.

8.1. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:

8.1.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or

8.1.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or

8.1.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.

8.2. The Employment Business may terminate an Assignment forthwith by notice if:

8.2.1. the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 3 days of receiving written notice from the Employment Business to do so; or

8.2.2. the Client fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or

8.2.3. the Client is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

8.2.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or

8.2.5. an order is made for the winding up of the Client, or where the Client passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

8.2.6. (Where the Client is an individual) the Client dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

9. CONFIDENTIALITY AND DATA PROTECTION

All information relating to a Consultancy is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Consultancy Services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times. In addition information relating to the Employment Business' 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. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Consultancy Services by the Consultancy or any third party to whom the Consultancy Services are assigned or sub-contracted for the Client during the Assignment shall belong to the Client, save such rights as may be expressly owned or retained by the Consultancy and set out in Assignment Details to this Agreement. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Consultancy shall (and any relevant member of the Consultancy Staff shall) execute all such documents and do all such acts in order to give effect to the Client's rights pursuant to this clause.

11. LIABILITY

11.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Consultancy and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any Losses arising from the failure to provide a Consultancy for completion of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Consultancy or if the Consultancy terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business 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.

11.2. For the avoidance of doubt, neither the Consultancy nor the Consultancy Staff are under the supervision, direction or control of the Employment Business or the Client, the Client does not have the right to supervise, direct and control the Consultancy or the Consultancy Staff and no member of the Consultancy Staff is an agency worker as defined under the Agency Workers Regulations.

11.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Consultancy and about any requirements imposed by law or by any professional body, which must be satisfied if the Consultancy is to fill the Assignment. The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Consultancy.

11.4. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with and/or as a result of any breach of this Agreement by the Client.

12. NOTICES

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.

13. SEVERABILITY

If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable in any extent, such provision shall, to that extent, be severed from the remaining provisions, which shall continue to be valid to the fullest extent permitted by applicable laws.

14. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement are intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of England & Wales/Scotland and is subject to the exclusive jurisdiction of the Courts of England & Wales/Scotland.

Apex Resources Limited Terms and Conditions of Business

1. Definitions

In these Terms and Conditions the following definitions apply.

- “Apex”** means Apex Resources Limited.
“The Client” means the person, firm or company requiring the service of the Temporary Worker or seeking or effecting the Engagement of the Candidate.
“The Temporary Worker” means the person introduced to the Client by Apex to carry out the Temporary Assignment.
“The Temporary Assignment” means the period during which the Temporary Worker is engaged to render services to the Client.
“The Candidate” means the person introduced by Apex to the Client for a permanent placement.
“The Engagement” means the engagement of the Candidate or Temporary Worker by the Client or any person to whom information about the Candidate or Temporary Worker has been passed directly or indirectly by the Client to any capacity and whether under a contract of or for service.
“The Working Time Regulation” means the Working Time Regulations 1998 (Statutory Instrument 1998 no 1833).

2. Terms and Conditions

- a) These Terms and Conditions of Business supplied by Apex to the Client shall be incorporated into each contract made between Apex and the Client for the introduction of a Temporary Worker or Candidate.
b) No variation of these Terms and Conditions shall be valid unless approved in writing by a Director of Apex.

3. Jurisdiction

These Terms and Conditions shall be interpreted in accordance with English Law and parties agree to submit to the jurisdiction of the English Courts.

4. Worksheets/Attendance Records

- a) At the end of each week of the Temporary Assignment or the end of the Temporary assignment if earlier, the Client will request a completed Worksheet from the Temporary Worker and the Client will sign the Worksheet if in agreement with it. Unless stated in writing in advance by the Client and Director, Temporary Worker or representative shall be deemed duly authorised so to do and such signature shall be conclusive evidence that:
i. the Temporary Worker has worked the number of hours shown on the Worksheet; and
ii. the Client is satisfied with the services provided by the Temporary Worker; and
iii. the Client is liable to pay Apex charges in accordance with Clause 5 of the Terms and Conditions.
b) The Client will retain one copy of the signed Worksheet.
c) Signature of the Worksheet by the Client indicates satisfaction with the services provided by the Temporary Worker and confirmation of the number of hours worked. Failure to sign the Worksheet does not absolve the Client's obligation to pay the charges in respect of the hours worked

5. Charges

Subject to Clause 5(b) below, Apex shall charge the Client for the hours worked by the Temporary Worker, in accordance with its list of amounts stated on the booking confirmation form which will be issued at the date of commencement of the Temporary Assignment and the Client shall pay such Charges without any deduction (CITB levy and Main Contractor Discount deductions are specifically not permitted), abatement or set off.

- a) Apex reserves the right to vary the charges from time to time during the Temporary Assignment.
b) Charges for the provision of a Temporary Worker shall be calculated by Apex by multiplying the hourly amount in relation to the Temporary Worker by the numbers of hours worked by the Temporary Worker (**Charges**).
c) Apex shall invoice the Client on a weekly basis for the Charges calculated in accordance with paragraph 5(b) plus VAT. The amount invoiced shall be payable within 30 days (**Payment Term**) of the date of the invoice.
d) Failure by the Client to pay invoices in accordance with Clause 5(c) will entitle Apex to withdraw their services and the services of any Temporary Worker and to invoice interest charges overdue by more than 7 days at the rate of 5% above the annual base rate of Barclays Bank plc from time to time from the due date until date of payment.
e) Apex reserve the right to exercise its statutory right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 or any such equivalent legislation
f) In the event of default in the payment of any Charges, Fees, Gross Remuneration (yearly salary) Fee or interest when due in accordance with this Agreement, Apex may, without notice or demand, declare all Charges, Fees, Gross Remuneration (yearly salary) Fees or interest then unpaid but otherwise accrued, immediately due and payable.
g) Apex shall be entitled to charge the Client all and any reasonable costs incurred, whether administrative, collection or legal, in recovering or attempting to recover any payment due from the Client under clauses 5(b) and 5(c). In respect of collection costs it is agreed between Apex and the Client that 10% of the sum outstanding shall constitute a reasonable cost (excluding V.A.T.)
h) The Client shall indemnify Apex against all costs incurred by Apex in obtaining payment of any overdue invoice. If the recoveries of the sums outstanding from the Client are passed to a debt collection agency or to solicitors, the Client shall pay Apex's costs in instructing any said debt collection agency or solicitors and all legal costs and disbursements.
i) Unless otherwise agreed in writing, the Client will not be responsible for paying the Temporary Workers remuneration (yearly salary) nor for the deduction and payment of the appropriate National Insurance Contributions and Income Tax in relation to the Temporary Worker.

6. Liability

- a) Apex gives no warranties and makes no representation to the Client as to the suitability, skill, experience, knowledge or honesty of the Temporary Worker, nor shall Apex be liable for any breach of such warranty or misrepresentation. Apex will provide the Client with all assistance reasonably required by the Client to form a view as to suitability of a Temporary Worker.
b) Whilst Apex will use reasonable efforts to fulfil the Client's requirements in respect of temporary staff, Apex shall not be liable for any loss, expense, damage or delay from any failure to provide suitable temporary staff at the time or for all or part of the period requested by the Client.
c) Subject to Clause 6(e), Apex accepts no liability for any loss, expense, damage or delay arising from the negligence, dishonesty, misconduct or lack of skill on the part of the Temporary Worker or if the Temporary Worker terminates the Temporary Assignment for any reason, the Client having been responsible for establishing the suitability of the Temporary Worker. In the event of a court judging Apex to be liable to pay damages to the Client, pursuant to the Terms and Conditions or for any other reason, Apex's liability shall be limited to that paid by the Client to Apex in relation to that particular Temporary Worker.
d) The Client shall notify Apex within four hours of commencement of the Temporary Assignment should the Temporary Worker prove unsatisfactory and provided such notification is confirmed to Apex in writing within 7 days, no fee will be charged by Apex for this period. In the absence of such notification the full charge hereunder shall be payable.
e) Nothing in these Terms and Conditions is intended or purports to exclude Apex from liability as a result of its own negligence in death or personal injury to that Temporary Worker or any other third party.

7. Responsibility of the Client

- a) The Client shall be responsible for all acts, errors and omissions of the Temporary Worker whether wilful, negligent or otherwise.
b) Temporary Workers are engaged by the Client under contract for services. They are not the employees of the Client but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The client agrees to be responsible for all acts errors or omissions of the temporary worker whether wilful negligent or otherwise as though he was a employee of the client
c) The Client shall provide the Temporary Worker with adequate instruction, training and safety clothing where necessary.
d) The Client shall comply with all statutes, by-laws and legal requirements in respect of the Temporary Worker including (but without limitation) the Working Time Regulations and requirements regarding health and safety at work. The Client shall provide appropriate Employer's and Public Liability insurance cover for the Temporary Worker during the Temporary Assignment.
e) The Client will assist Apex to comply with the Working Time Regulations by supplying any relevant information about the Assignment required and the Client will not do anything to cause Apex to be in breach of its obligations under these Regulations.
f) Where the Client requires or may require the service of a Temporary Worker for more than 48 hours in any week, the Client must notify Apex of this requirement before the commencement of that week.
g) Where the Client requires or may require the service of a Temporary Worker for night work, as defined in the Working Time Regulations, the Client must notify Apex of this requirement before the commencement of that week.
h) Where the Client requires or may require the Temporary Worker to perform night work in situations involving special hazards or heavy physical or mental strain, as defined in the Working Time Regulations, the Client must notify Apex of this requirement before the commencement of that week.
i) The Client shall indemnify Apex and shall keep Apex indemnified against:
i. any claim of whatsoever kind which the Temporary Worker or members of his family or other dependants may make against Apex by reason of or arising out of any failure by the Client to fulfil its obligations hereunder.
ii. any claim which a third party may make against Apex arising from or by reason of any conduct, act or omission of the Temporary Worker during the Temporary Assignment, and
iii. All costs and expenses (including legal costs and expenses) incurred by Apex in respect of or arising out of any claim.

8. Recruitment of Temporary Staff

If an Temporary Worker who has carried out a Temporary Assignment during the preceding six months is engaged by the Client in any capacity and whether under a contract of or for service the Client shall pay to Apex fees as per 13(a-g)

9. Driving of Vehicles

Where the engagement of Temporary Assignment involves the Temporary Worker driving any vehicle, it shall be Clients sole responsibility to:

- a) Ensure the said vehicle complies in all respects with all applicable legislation and is comprehensively insured to include all liability to third parties and property and liable for death or injury to the Temporary Worker.
b) Ensure that the vehicle is safe, fully maintained and in good working order.
c) Satisfy it that the Temporary Worker has a suitable current licence for driving such vehicle.

10. Equipment

The Client will provide proper and adequate security facilities and shall provide and be totally responsible for all tools, equipment and materials necessary to carry out the proposed services whether their own or the Temporary Workers.

11. Loans

The Client will not provide encashment facilities or make loans or provide money to an Temporary Worker other than at the Clients own risk unless previously and specifically required to do so by Apex in writing. No allowances for any such unauthorised payments for them will be made in any invoice rendered by Apex to the Client.

12. Termination

- a) The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Apex to remove the Temporary Worker. Apex may in such circumstances reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates: -
i. within four hours of the Temporary Worker commencing the Temporary Assignment where the booking is for more than seven hours; or
ii. within two hours for bookings of seven hours or less;
b) Notification of the unsuitability of the Temporary worker shall be confirmed in writing to Apex with 12 hours of the termination of the Temporary Assignment.
c) Any of the Client, Apex or the Temporary Worker may terminate an Temporary Assignment at any time without prior notice and without liability.
d) Payment of any outstanding invoices relating to the Temporary Worker become payable on termination.
e) The Client shall notify Apex immediately and without delay and in any event within 2 (TWO) hours (by fax) if the Temporary Worker fails to attend work or notifies the Client that he is unable to attend work for any reason.

13. Permanent Fees

- a) No fee is payable for preliminary discussions and recommendations.
b) The Client will pay Apex an amount based upon the Engagement of the Candidate calculated as a percentage of the first year's anticipated gross remuneration (yearly salary) of the Candidate which includes salary commission, bonuses, provision of a car and any other taxable emolument (**Fee**). For this purposes the percentage of the Candidate's remuneration (yearly salary) payable as an amount to be determined at the time of booking (when no fee is agreed the default fee is 20%).
c) Should the client fail to settle the invoice detailed in 13(b) within a reasonable period no more than 60 days from the date of the invoice (our standard period is 30 days) the client agrees to pay our default percentage rate as set out below (calculated as a percentage of the first year's anticipated gross remuneration (yearly salary) of the Candidate which includes salary commission, bonuses, provision of a car and any other taxable emolument) (**Gross Remuneration (yearly salary) Fee**).
Gross Remuneration (yearly salary) Fee payable:
Up to £24999 22.5%
£25000 - £34999 25%
£35000 plus 27.5%
d) Apex may, without limiting its other rights, charge interest on the Gross Remuneration (yearly salary) Fee at 5% a year above the base rate of Barclays Bank plc from time to time in force. Interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
e) In the event that the Candidate was previously a Temporary Worker the gross remuneration (yearly salary) shall be deemed in any event to be no less than the hourly charge (plus VAT) for the Candidate while a Temporary Worker multiplied by 300.
f) At all times VAT must be added to the fee calculated.
g) The fee will be payable as a result of the Engagement notwithstanding the fact that it may not comply with the Client's original requirement (e.g. as to number or type of vacancy).
h) Apex reserve the right to invoice the Client for a fee based on the gross remuneration (yearly salary) actually paid during the Candidates first twelve months if in excess of the anticipated gross remuneration (yearly salary) referred to in Clause 13(b) and 13(c) above, and the Client undertakes to forthwith provide Apex with all information reasonably requested by it relating to the actual gross remuneration (yearly salary) of the Candidate to enable it to determine if such an invoice should be rendered, including without limitation, all payroll records, Inland Revenue records P45's and P60's.
i) The Client undertakes to forthwith send notice to Apex in writing as soon as it comes to its attention that any Temporary Worker/Candidate has accepted an offer of Engagement from it or any other party.

14. Temporary to Permanent fees

- a) In the event of the Engagement by the Client of a Temporary Worker supplied by Apex for a Temporary Assignment either:
i. directly
ii. pursuant to being supplied by another employment business
during the Assignment or within whichever is the longer of either 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 these purposes); or 8 weeks from the day after the last day the Temporary Worker worked on the Assignment the Client shall be liable, subject to electing by giving 2 days prior notice, to either:
iii. Extend the period of hire of the Temporary Worker to 14 weeks during which the Client shall pay the current hourly charge agreed pursuant to:
iv. Transfer Fee calculated as per clause 13(b), or 13(c) whichever the greater (**Transfer Fee**). No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
b) Where the client does not give such notice before the Temporary Worker is engaged the parties agree that the Transfer Fee shall be due.
c) Introduction Fees where a Temporary Worker/Candidate is introduced but not supplied In the event that there is an Introduction of a Temporary Worker/Candidate to the Client which does not result in the supply of that Temporary Worker/Candidate by Apex to the Client, but which leads to an Engagement of the Temporary Worker/Candidate by the Client either directly or pursuant to being supplied by another employment business or third party within 6 months from the date of Introduction the Client shall be liable to fees as per Introduction fee below:
i. An Introduction Fee calculated as per clause 13(b) or (c) whichever the greater (**Introduction Fee**). No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due.
d) Where the client does not give such notice before the Temporary Worker is engaged the parties agree that the Introduction Fee shall be due.
e) Inability to supply during the period of hire if the Client elects for a period of hire, but before the end of such period Engages the Temporary Worker supplied by Apex either directly or pursuant to being supplied by another employment business or the Temporary Worker chooses not to be supplied for the period of hire, the Transfer or Introduction Fee may be charged, reduced by such percentage to reflect any period of hire already undertaken by the Temporary Worker and paid for by the Client.
f) Where period(s) of absence due to illness or injury prevent the Temporary Worker from being employed or supplied for 4 or more days, which shall be qualifying days for the purposes of Statutory Sick Pay (SSP), during the period of hire as set out above, the period of hire shall be extended by a period equivalent to the total period of absence. Should Apex pays the Temporary Worker SSP during the period of hire an equivalent amount shall be charged to and be payable by the Client in addition to the charges agreed.

15. Confidentiality

The Client acknowledges that all information supplied by it relating to the Candidate/Temporary Worker is confidential and if the Client passes any such information to any other party (on whatever basis and for whatever reason) and the Candidate/Temporary Worker is then the subject of an Engagement, then the Client shall be liable to pay the fees set out in Clause 13 and 14 as if had itself made an offer of Engagement to the Candidate/Temporary Worker which the Candidate/Temporary Worker had accepted.

16. Candidates/Temporary Worker Suitability

- a) Although every reasonable effort is made by Apex to ensure the suitability of each Candidate/Temporary Worker the Client is responsible for taking all steps to check and ensure that the Candidate/Temporary Worker is suitable for the position for which he is engaged including taking up references, checking qualifications, checking driving licences, checking work permits, arrange medical examinations and the like.
b) Apex may take up references and subject to the terms of the Unfair Contract Terms Act 1977 cannot accept responsibility for any statement or representation about a Candidate/Temporary Worker made by its servant or agents, whether or not in writing.
c) Apex does not accept responsibility for any loss, expense, and damage incurred directly or indirectly by the Client in respect of any Candidate/Temporary Worker.
d) In the event that the Court rules that damages have been incurred by the Client the amount of damages shall be limited to the fee payable to and received by Apex upon Engagement less any wages already paid.

17. Law

- a) These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the courts of England & Wales

THE PARTIES

- (1) Apex Resources Limited (registered company no.5038793) of Apex House, 1 Bridle Path, Watford, Hertfordshire WD17 1UE ("the Employment Business").
- (2) Person, firm or company requiring the services of Apex Resources Ltd ("the Hirer") to whom the Intermediary is introduced. For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Intermediary is introduced.

RECIPIENTS

- (A) The Employment Business carries on the business of sourcing and supplying contractors to provide services to clients of the Employment Business. The Hirer has instructed the Employment Business to supply an Intermediary to provide certain services, ("the Intermediary Services") as specified in the relevant Assignment Details Form.
- (B) The Employment Business will introduce an Intermediary to the Hirer to provide the Intermediary Services on the terms and subject to the conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following definitions apply:
 - "Agency Worker" means any officer, employee, worker or representative of the Intermediary supplied to provide the Intermediary Services;
 - "Agency Workers Regulations" means the Agency Workers Regulations 2010;
 - "Assignment" means the Intermediary Services to be performed by the Agency Worker for a period of time during which the Intermediary is supplied by the Employment Business to provide Intermediary Services to the Hirer;
 - "Assignment Details Form" means written confirmation of the Assignment details agreed with the Hirer prior to commencement of the Assignment;
 - "AIR Claim" means any claim or court by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the Agency Workers Regulations;
 - "Calendar Week" means any period of seven days starting with the same day as the first day of the First Assignment;
 - "Charges" means the charges as notified to the Hirer at the commencement of the Assignment and which may be varied by the Employment Business from time to time during the Assignment. The charges are comprised of the Intermediary's fees, the Employment Business' commission, and any travel, hotel or other disbursements as may be agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable;
 - "Comparable Employee" means as defined in Schedule 1 to this Agreement;
 - "Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
 - "Control" means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through ownership of voting capital, by contract or otherwise, and "Controlled" shall be construed accordingly;
 - "Data Protection Laws" means the Data Protection Act 1998, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;
 - "Engagement" means the engagement, employment or use of the Intermediary's services or the services of the Agency Worker, by the Hirer or by any third party to whom they have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis whether under a contract of service or contract of, an agency, licence, franchise or partnership arrangement, or any other engagement and "Engage", "Engages" and "Engaged" shall be construed accordingly;
 - "First Assignment" means:
 - (a) the relevant Assignment; or
 - (b) if prior to the relevant Assignment:
 - (i) the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and
 - (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);
 - "Hirer's Group" means (a) any individual company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
 - "Intermediary" means the person, firm or corporate body introduced to the Hirer by the Employment Business to carry out an Assignment (and, save where otherwise indicated, includes any Agency Worker);
 - "Introduction" means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Intermediary or Agency Worker (ii) the Hirer's instruction of an Intermediary or Agency Worker (in person, by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of an Intermediary; and, in any case, which leads to an Engagement of that temporary worker, Intermediary or Agency Worker; and "Introducing" shall be construed accordingly;
 - "Losses" means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;
 - "Period of Extended Hire" means any additional period that the Hirer wishes the Intermediary to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;
 - "Qualifying Period" means 12 consecutive Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to this Agreement;
 - "Relevant Period" means (a) the period of 8 weeks commencing on the day after the last day on which the Intermediary worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Intermediary worked for the Hirer having been supplied by the Employment Business; or (c) 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous Assignment;
 - "Relevant Terms and Conditions" means terms and conditions relating to:
 - (a) pay;
 - (b) the duration of working time;
 - (c) rest work;
 - (d) rest periods;
 - (e) rest breaks; and
 - (f) annual leave
- 1.2. Any reference included in the contracts of employment or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) any such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;
- 1.3. "Remuneration (yearly salary)" includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, indemnity payments, the benefit of a company car and all other payments taxable, (and, where applicable, non-taxable) payable to or receivable by the Intermediary for or on behalf of the Intermediary. Where a company car is provided, a notional amount of £3000 will be added to the sums paid to the Intermediary in order to calculate the Employment Business' fee;
- 1.4. "Transfer Fee" means the fee payable in accordance with clause 8 below and Regulation 10 of the Conduct Regulations; and
- 1.5. "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.
- 1.6. Unless the context otherwise requires the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.7. The headings contained in this Agreement are for convenience only and do not affect its interpretation.
- 1.8. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2. THE CONTRACT

- 2.1. This Agreement together with the attached Schedules and any applicable Assignment Details Form ("Agreement") constitutes the contract between the Employment Business and the Hirer for the supply of the Intermediary Services by the Employment Business to the Hirer, and is deemed to be accepted by the Hirer by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about the Agency Worker or Intermediary to any third party following an Introduction.
- 2.2. This Agreement contains the entire agreement between the Parties and unless otherwise agreed in writing by a Director of the Employment Business shall prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
- 2.3. Subject to Clause 6.2 no variations, alterations, amendments, or changes to the details of such variation are agreed between a Director of the Employment Business and the Hirer and are set out in writing and a copy of the varied terms is given to the Hirer stating the date on or after which such varied terms shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing an Intermediary for Assignments with the Hirer.
- 2.5. The Hirer acknowledges that the Agency Worker carrying out the Assignment have not opted out of the Conduct Regulations and that all of the Conduct Regulations apply to this Agreement.

3. OBLIGATIONS OF THE HIRER

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:
 - 3.1.1. the type of work that the Intermediary would be required to do;
 - 3.1.2. the location and hours of work;
 - 3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;
 - 3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;
 - 3.1.5. the date the Hirer requires the Intermediary to commence the Assignment;
 - 3.1.6. the duration or likely duration of the Assignment;
- 3.2. The Hirer will comply with the Conduct Regulations 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of Agency Workers in relation to access to employment) of the Agency Workers Regulations.
- 3.3. To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during such Assignment (as appropriate) and at any time at the Employment Business' request:
 - 3.3.1. to inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the relevant Agency Worker has worked in the same or a similar role with the Hirer or any other hirer prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which may or may count towards the Qualifying Period;
 - 3.3.2. if, since 1 October 2011, the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and the details requested by the Employment Business;
 - 3.3.3. to inform the Employment Business if, since 1 October 2011, the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 3.3.3.1. completed two or more assignments with the Hirer;
 - 3.3.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 3.3.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;
 - 3.3.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment; to:
 - 3.3.4.1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the relevant Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - 3.3.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
 - 3.3.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
 - 3.3.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
 - 3.3.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and any appraisal processes and any variations of the same.
- 3.4. In addition, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the Agency Workers Regulations, the Hirer will:
 - 3.4.1. integrate the Agency Worker into its relevant performance appraisal system;
 - 3.4.2. assess the Agency Worker's performance;
 - 3.4.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 3.4.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 3.5. The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.6. The Hirer warrants that:
 - 3.6.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.3, 3.4 and 3.5 is complete, accurate and up-to-date; and
 - 3.6.2. it will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.3, 3.4 and 3.5.
- 3.7. Without prejudice to clauses 14.9 and 14.7, the Hirer shall inform the Employment Business in writing of any:
 - 3.7.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the Agency Workers Regulations; and
 - 3.7.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made or written complaint or request is received by the Hirer and the Hirer undertakes to take such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the Agency Workers Regulations and the Hirer will provide the Employment Business with a copy of any such written statement.
- 3.8. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Intermediary for the Intermediary to fill the Assignment.

4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER

- 4.1. When introducing an Intermediary to the Hirer the Employment Business shall inform the Hirer:
 - 4.1.1. of the Agency Worker supplied by the Intermediary and that the Agency Worker supplied by the Intermediary to carry out the Assignment;
 - 4.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
 - 4.1.3. that the Agency Worker is willing to work in the Assignment;
 - 4.1.4. details of the Intermediary Services to be provided; and
 - 4.1.5. the Charges.
- 4.2. 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 Intermediary is introduced for an Assignment in the same position as in which the Intermediary had previously been supplied within the previous 5 business days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.

5. TIMESHETS

- 5.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week) the Hirer shall sign the Employment Business' timesheet verifying the number of hours worked by the Agency Worker during that week.
- 5.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked by the Agency Worker. If the Hirer is unable to sign a timesheet produced for authentication by the Intermediary because the Hirer disputes the hours claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Agency Worker. Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the charges in respect of the hours worked.
- 5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Intermediary. In the event that the Hirer is dissatisfied with the work performed by the Intermediary the provisions of clause 10.1 and 11 below shall apply.

6. CHARGES

- 6.1. The Hirer agrees to pay the Charges.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:
 - 6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
 - 6.2.2. if there is any variation in the Relevant Terms and Conditions.
- 6.3. The Charges are invoiced to the Hirer on a weekly basis and are payable within 14 days.
- 6.4. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.4 immediately following any such award and the Employment Business will pay any such bonus to the Intermediary for onward payment to the Agency Worker. For the avoidance of doubt the Hirer will not pay any employees' National Insurance contributions and the Employment Business' commission in addition to any bonus payable to the Agency Worker.
- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.4.
- 6.6. The Employment Business 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.
- 6.7. There are no refunds payable in respect of the Charges.
- 6.8. In the event of default in the payment of any Charges, Fees, Gross Remuneration (yearly salary) Fees or interest then due in accordance with this Agreement, Apex Resources Ltd may, without notice or demand, declare all Charges, Fees, Gross Remuneration (yearly salary) Fees or interest then unpaid but otherwise accrued, immediately due and payable.
- 6.9. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.

7. PAYING THE INTERMEDIARY

The Employment Business is responsible for paying the Intermediary.

8. TRANSFER FEES

- 8.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer Engages the Intermediary or any Agency Worker Introduced by the Employment Business other than via the Employment Business, or introduces the Intermediary or any Agency Worker to a third party and such introduction results in an Engagement of the Intermediary or any Agency Worker by the third party other than via the Employment Business; and
 - 8.1.1. where the Intermediary or Agency Worker has been supplied by the Employment Business, such Engagement takes place during the Assignment Details Form's Relevant Period;
 - 8.1.2. where the Intermediary or Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer.
- The Transfer Fee shall be agreed in writing between the Employment Business and the Hirer. In the event that the parties do not agree the amount of the Transfer Fee then the Employment Business shall be entitled to charge a fee calculated as follows: 2% of the Remuneration (yearly salary) payable to the Agency Worker during the first 12 months of the Engagement or, if the actual amount of the Remuneration (yearly salary) is not known, the Charges multiplied by 300.
- 8.2. If the Hirer wishes to Engage the Intermediary other than via the Employment Business, without liability to pay a Transfer Fee the Hirer may, on giving 1 weeks written notice to the Employment Business, engage the Intermediary for the Period of Extended Hire specified
 - 8.3. During such Period of Extended Hire the Employment Business shall supply the Intermediary on the same terms on which it has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.2; and the Hirer shall continue to pay the Charges set out in clause 6. If the Employment Business is unable to supply the Intermediary for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Hirer does not wish to hire the Intermediary on the same terms as the Assignment; but the Intermediary or the Agency Worker is Engaged by the Hirer, the Hirer shall pay the Transfer Fee, reduced pro-rata to the period of Extended Hire worked by the Intermediary or the Agency Worker, if the Intermediary or Agency Worker is Engaged by the Hirer. If the Hirer fails to give notice of its intention to Engage the Intermediary other than via the Employment Business before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.
 - 8.4. Where prior to the commencement of the Hirer's Engagement other than via the Employment Business the Employment Business and the Hirer agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee, reduced pro-rata to the period of Extended Hire worked by the Intermediary or the Agency Worker, to the amount of the agreed fixed term. Should the Hirer extend the Intermediary's Engagement or re-Engage the Intermediary within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.
 - 8.5. No refund of the Transfer Fee will be paid in the event that the Engagement of the Intermediary other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Intermediary or any Agency Worker, subsequently terminates or terminates before the end of the fixed term referred to in clause 8.4.
 - 8.6. VAT is payable at the applicable rate in addition to any Transfer Fee due.

9. UNSUITABILITY OF THE INTERMEDIARY

- 9.1. The Hirer undertakes to supervise the Intermediary sufficiently to ensure the Hirer's satisfaction with the Intermediary's standards of work. If the Hirer reasonably considers that the Intermediary Services are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Intermediary to leave the Assignment immediately, or by directing the Employment Business to remove the Intermediary. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Intermediary, provided that the Hirer has notified the Employment Business that they have asked the Intermediary to leave the Assignment or the Assignment terminates:
 - 9.1.1. within 4 hours of the Intermediary commencing the Assignment where the Assignment is for more than 7 hours; or
 - 9.1.2. within 2 hours for Assignments of 7 hours or less;
- 9.2. and provided that notification of the unsuitability of the Intermediary is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 9.2. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that an Intermediary supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all such Charges incurred prior to the termination of the Assignment.
- 9.3. The Hirer shall notify the Employment Business immediately and without delay and in any event within 2 hours if the Intermediary or the Agency Worker fails to provide the Intermediary Services or has notified the Hirer that they are unable to provide the Intermediary Services for any reason.

10. TERMINATION OF THE ASSIGNMENT

- 10.1. Either party may terminate the Assignment by giving to the other party in writing the period of notice specified in the Assignment Details Form.
- 10.2. Notwithstanding the provisions of clause 11, the Hirer may terminate the Assignment forthwith by notice in writing to the Employment Business where:
 - 10.2.1. the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Intermediary Services; or
 - 10.2.2. the Intermediary is in willful or persistent breach of its obligations; or
 - 10.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
 - 10.2.4. the Hirer reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.
- 10.3. The Employment Business may terminate an Assignment forthwith by notice in writing if:
 - 10.3.1. the Hirer is in willful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so;
 - 10.3.2. the Hirer fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or
 - 10.3.3. the Hirer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes a proposal or proposes to make any arrangement or composition with its creditors; or
 - 10.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
 - 10.3.5. an order is made for the winding up of the Hirer, or the Hirer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or
 - 10.3.6. (where the Hirer is an individual) the Hirer dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1. All information relating to an Intermediary and the Agency Worker is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Intermediary Services to the Hirer. Such information must not be used for any other purpose not intended to or authorised by the Hirer and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.
- 11.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the Agency Workers Regulations (including, for the avoidance of doubt and without limitation, where dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).
- 11.3. Information relating to the Employment Business' 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.

12. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services by the Intermediary for the Hirer during the Assignment shall belong to the Hirer, save such rights as may be expressly owned or retained by the Intermediary and set out in the Assignment Details Form. Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Intermediary shall (and any relevant member of the Agency Worker shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

13. LIABILITY

- 13.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from the Intermediary and to provide the same in accordance with the Assignment details as provided by the Hirer no liability is accepted by the Employment Business for any Losses arising from the failure to provide an Intermediary for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Intermediary or the Agency Worker or if the Intermediary terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which is not permitted to exclude under law.
- 13.2. The Intermediary supplied by the Employment Business to the Hirer is engaged on a contract for services and the Agency Worker supplied by the Intermediary is deemed to be under the supervision, direction and control of the Hirer for the duration of the Assignment.
- 13.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Intermediary and about any requirements imposed by law or by any professional body, which must be satisfied if the Intermediary is to fill the Assignment. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Intermediary.
- 13.4. The Hirer undertakes not to request the supply of an Intermediary to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action.
- 13.5. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Hirer.
- 13.6. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 13.7. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and to give such information and assistance as the Employment Business may request by way of written or oral communication to the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

14. NOTICES

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.

15. SEVERABILITY

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

16. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

17. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of England & Wales/Scotland and is subject to the exclusive jurisdiction of the Courts of England & Wales/Scotland.