



Terms of Business for Contract Clients

The Company is acting as an employment business. The Client has identified a need for technical help and assistance in the performance and completion of works and wishes to utilise the services of a service provider to be introduced and supplied by the Company.

1. Definitions

In the Agreement the following definitions apply, unless the context otherwise requires:

"Company" refers to Upstream Resourcing Ltd"

"Agreement" means the agreement between the Company and the Client, incorporating the terms and conditions contained herein, the schedules and the worksheets.

"Client" means person, firm or corporate body to whom the Service Provider is Introduced and supplied by the Company.

"Confidential Information" means any information relating to the business and affairs of both the Company and the Client and to the identity and business and affairs of either Parties' customers and clients and potential customers and clients which comes to either Parties' attention or possession and which both Parties' regard or could reasonably be expected to regard as confidential, whether or not any such tangible information is marked 'confidential'.

"Consultant(s)" means the person (s) introduced to the Client by the Company and shall include the Consultant(s) specified in Schedule 1.

"Engagement" means the engagement, employment, retention or utilisation of a Service Provider other than through the Company and "Engage" shall be construed accordingly.

"Extended Period of Hire" means an extended period of hire during which the Service Provider will be supplied to the Client by the Company, upon no less favourable terms, the length of which is determined by the duration of the Agreement and which will be calculated on a sliding scale as follows:

Duration of the Agreement	Extended Period of Hire
Between 0-6 months	9 months
Between 6-12 months	6 months
Greater than 12 months	3 months

"Intellectual Property Rights" include but are not limited to copyright, patents, utility models, trade marks, service marks, design rights (whether registered or unregistered), database rights and proprietary information rights in all materials, designs, programs, reports, manuals, visual aids and any other material prepared under the Agreement.

"Introduction" means the provision of any information to the Client by the Company (whether in writing or orally) which identifies a Service Provider or a Consultant.

"Introduction Fee" means a fee payable by the Client to the Company equivalent to 12 weeks of the anticipated gross charge out rate for the Service Provider and /or Consultant(s).

"Regulations" means The Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended from time to time.

"Restriction Period" means the 12 months following either:

- i. the Introduction of the Service Provider and/or its Consultant(s); or
- ii. the termination or expiration of the Agreement; whichever expires last.

Save that if the Service Provider and its Consultant(s) have not opted out of the Regulations and there has been a Supply then the Restriction Period shall mean the relevant period stated in the Regulations.

"Service Provider" means the limited companies employing the Consultant(s) including any representative, employee, or officer thereof (and shall include the Consultant(s)) introduced to the Client by the Company and includes the service provider with whom the Company contracts to carry out the Services.

"Services" means all or any part of the work or services to be performed by the Service Provider detailed herein and in the schedules.

"Supply" means the supply of Services to the Client by the Service Provider through the Company.

"Transfer Fee" means a fee payable by the Client to the Company, calculated by multiplying the weekly client rate specified in Schedule 1 by a number of weeks determined by the duration of the Agreement and in accordance with the sliding scale set out below;

Duration of the Agreement	Number of Weeks
0-9 months	12 weeks
9-12 months	10 weeks
12 months plus	6 weeks

2. The Agreement

- I. The Agreement is deemed to have been accepted by the Client with effect from the date of an Introduction and shall remain in force for the period specified in the relevant schedule unless terminated in accordance with Clause 10 below.

II.

3. Performance of Services

0. The Company shall notify the Client if the Regulations apply to the Agreement and if practicable prior to the commencement of the Supply.
1. Services
 1. The Supply shall be for the period detailed in the relevant schedule. The Service Provider is engaged by the Company under a contract for services.
 2. It is the Client's responsibility to specify its requirements and timeframes and to provide all information to the Service Provider and to liaise with the Service Provider to ensure it is providing the Services as required and to the Client's satisfaction, such service reviews should be conducted prior to authorising worksheets which will commit the Client to settle invoices. The Client shall, at its

own expense, provide the Service Provider with all documents or other materials and data, or other information necessary for the completion of the Services. The Service Provider shall use its own equipment where appropriate.

3. The Client is to agree the place of work with the Service Provider and the material to be utilised in performance of the Agreement. The Client shall ensure that the Service Provider is accorded sufficient access to any of the Client's premises, information, data or personnel and use of any equipment, which is reasonably necessary for the completion of the Services. Whilst the Service Provider is working at the Client's premises, its Consultant(s) should be provided with a suitable place of work and such materials in a good condition and sufficient for the purposes for which they are required and the Client should ensure that the Service Provider's Consultant(s) abides by the rules and regulations of the Client's site.
4. Whilst the Service Provider's Consultant(s) is working at the Client's premises, the Client shall ensure that the health and safety standards required by the applicable law and regulations are observed. The Client undertakes to notify the Company of specific risks to health or safety known to it and what steps the Client has taken to prevent or control such risks and confirms it knows of no reason why it would be detrimental to the interests of the Service Provider to undertake the Supply.

2. **Standard of Services**

1. The Company shall use its best endeavours to ensure that the Service Provider is suitable to carry out the Services with reasonable skill and care and in this regard has made all reasonable enquiries of the Service Provider concerning suitability and technical competence. The Company does not test the Service Provider's technical skills and it is for the Client to satisfy itself as to the Service Provider's overall capability to fulfil the Agreement when interviewing the Service Provider and/or during the first week of the commencement of the assignment. The Company will accept no responsibility for information relating to the Service Provider which is outside its knowledge.
2. The Client should notify any complaints concerning the Service Provider's performance promptly to the Company.
3. The Company shall issue a Schedule 1 detailing terms specific to the Supply to the Client prior to its commencement.

4. **Payment of fees**

0. The Client shall pay the Company for all work performed by the Service Provider. All charge rates including additional hour rates and special rates for weekends and bank holidays are set out in the relevant schedule. Fees are calculated as a multiple of the number of hours/days/weeks (as appropriate) during which the Services have been provided during a period and the relevant charge rate.
1. The Company shall provide the Service Provider with worksheets on which to record the hours worked by the Consultant(s). The Service Provider will submit these worksheets to the Client for signature and it is the Client's responsibility to ensure that they are a true reflection of the hours worked by the Service Provider and that it is satisfied with the quality of the work performed. Failure to sign the worksheet(s) does not absolve the Client of its obligation to pay the charges in respect of hours worked.
2. The Client must sign these worksheets and return them to the Service Provider promptly. The Company relies on the fact that the Client has signed the worksheets when making payment to the Service Provider. The Client shall assist the Company if it needs to verify hours claimed on a worksheet. The Client shall retain one copy of each worksheet for its own records.
3. An authorised signatory of the Client must approve all expenses, before they are incurred, in writing and the Client may reimburse the Service Provider's expenses directly.
4. An invoice for the work performed by the Service Provider shall be presented to the Client for payment and the Client warrants that it shall be paid within 28 days of the invoice being tendered, unless otherwise specified in the relevant schedule or unless a standing order is arranged. No fee rebates shall apply.
5. In the event of late payment, the Client shall pay to the Company a compensatory payment of a fixed sum and statutory interest on the sum due in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 (as amended). The Client shall be liable

- to pay any legal costs incurred by the Company if the Client fails to pay an invoice in accordance with Sub Clause 4.5.
6. The Company is responsible for making payment to the Service Provider and in no circumstances shall the Client make payment to the Service Provider directly, except as specified in Sub Clause 4.4 above.
 7. Under no circumstances should the Client discuss with the Service Provider the rates charged by the Company to the Client.
5. **Special Payment Conditions**
0. Any special conditions as to payment, if applicable, shall be specified in a schedule to the Agreement.
6. **Intellectual Property Rights**
0. All Intellectual Property Rights and other rights shall belong to the Client and the Company shall assist the Client in acquiring any Intellectual Property Rights that shall arise as a result of the Services.
7. **Confidentiality**
0. Except as permitted by law, the Parties shall not disclose any Confidential Information relating to the other party without the other party's prior written consent.
 1. Either party shall immediately notify the other party if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such assistance as is reasonable to deal with such an event.
8. **Limitation of Liability**
0. The Company shall, subject to Sub Clause 8.2 below, indemnify the Client against its direct losses, to the extent that such death, injury, loss or damage is attributable to its negligent acts or omissions in its provision of employment business services.
 1. The Company shall not have any liability to the Client under or in connection with the Agreement howsoever arising in respect of loss of profits or contracts or for special, indirect or consequential loss or damage, or for any increased costs or expenses and its liability under Sub Clause 8.1 shall be limited to a maximum of £250 000 per claim. These exclusions shall not apply to personal injury, including death caused by its negligence.
 2. No liability is accepted by the Company for any loss, expense, damage, costs or delay arising from;
 1. the negligent acts or omissions, dishonesty, misconduct or lack of skill of the Service Provider or its Consultant(s); and/or
 2. failure by the Service Provider to complete the Services.
 3. The Client will comply with all relevant legal requirements, including the provision of adequate Public Liability insurance in respect of the Service Provider. The Client shall indemnify the Company against any costs, claims, damages and expenses incurred by the Company as a result of any breach of the Agreement by the Client.
 4. Neither party shall have any liability in respect of any delay in carrying out or failing to carry out any of its obligations under the Agreement caused by fire, strikes or other industrial action or dispute, Acts of Government or any circumstance outside the reasonable control of the Parties.
9. **Replacement of the Service Provider/ Consultant(s)**
0. The Client shall notify the Company in writing if it wishes to terminate the Services of the Service Provider in reliance upon Sub Clause 10.4 below. The Client shall provide the Company with a clear written account of the problems and the Company shall endeavour to find a replacement.
 1. The provision of a replacement is in no way an acceptance by the Company that the work carried out by the Service Provider was not carried out with reasonable skill and care.
 2. The Service Provider may substitute the Consultant named in Schedule 1 provided that;
 1. the Services remain as detailed in the Agreement; and
 2. the Client and the Company are reasonably satisfied that the proposed substitute possesses the necessary skills, expertise and resources to fulfil the Services; and
 3. the Client is reasonably satisfied that the proposed substitute will comply with its rules on health, safety, security and confidentiality; and
 4. no delay or reduction in quality shall occur due to the lack of technical or Client knowledge held by the substitute.

3. **Termination**

1. The Agreement may be terminated at any time by either party upon the provision of 28 days' notice to the other party in writing, unless otherwise stated in the relevant schedule.
2. Should the Client fail to pay any one invoice in accordance with Sub-Clause 4.5 then the Company shall have the following rights;
 1. to terminate the Agreement forthwith; and
 2. to terminate all agreements in force between the Client and the Company forthwith; and
 3. to claim all monies under all agreements in force between the Client and the Company, as rightfully due, including fees for work in progress unsupported by signed worksheets.
3. The Company may terminate the Agreement forthwith should the Client;
 1. fail to comply with the provisions of Clause 11;
 2. go into liquidation or a receiver, administrative receiver, administrator or someone of similar office be appointed to the Client or any part of its assets or undertakings;
 3. default on its payment obligations under any other agreement in force between the Client and the Company.
4. The Client may terminate the Agreement forthwith if it provides satisfactory evidence to the Company, in writing, that either;
 1. the Client, in its reasonable opinion, finds the Service Provider and/or its Specified Consultant to be negligent, inefficient, or technically unsuitable; or
 2. the Service Provider's specified consultant has committed an act of misconduct which, in the Client's reasonable opinion makes it unacceptable for it to continue to use the Services.
5. If in the sole opinion of the Company the Client's financial condition is such that it may not be able to meet its continuing obligations under the Agreement then the Company may terminate this Agreement unless the Client immediately pays all invoices due under the Agreement together with such further sums as the Company considers necessary, in its reasonable opinion, to secure its position with regard to future sums due under the Agreement. This is without prejudice to the Company's other rights under Clause 10.
6. Either party may terminate the Agreement forthwith should the other party fail to comply with the provisions of Clause 7.

4. **Restrictions**

1. Should the Client, within the Restriction Period, wish to Engage the services of the Service Provider and/or the Consultant(s) other than through the Company then it shall either;
 1. elect by 14 days' written notice to utilise the services of the Consultant(s) and/or the Service Provider for the appropriate Extended Period of Hire on the terms and conditions specified in the Agreement, or in the event of no Supply on terms as are agreed at the time; or
 2. in the event of no Supply, pay the Introduction Fee; or
 3. following termination or expiration of the Agreement, pay the appropriate Transfer Fee.
2. In the event the Client fails to specify whether payment of an Introduction Fee, Transfer Fee or Extended Hire Period is preferred, an Introduction Fee or Transfer Fee (as applicable) shall be charged upon Engagement by the Client.
3. Should any subsidiary or associated company of the Client, any client of the Client or any other third party to whom the Client has introduced the Service Provider, within the Restriction Period Engage the services of the Service Provider other than through the Company then the Client shall either:
 1. in the event of no Supply, pay the Introduction Fee; or
 2. following termination or expiration of the Agreement, pay the appropriate Transfer Fee.
4. Sub Clauses 11.1, 11.2 and 11.3 shall survive the termination of the Agreement for the Restriction Period.

5. **General**

1. The terms of the Agreement and of any specification provided under the Agreement may only be varied in writing by authorised representatives of both parties.

2. The forbearance or failure of the Company to enforce any of its rights or remedies to which it is entitled under the Agreement shall not be construed as a waiver of those rights or remedies and shall not restrict or prevent the Company enforcing or exercising those rights or remedies in any other instance at any time whether during or after the termination of the Agreement.
3. If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.
4. The Agreement shall be governed, construed and shall take effect in accordance with the laws of England and shall be subject to the non-exclusive jurisdiction of the English courts.
5. The terms of the Agreement represent the entire Agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise.
6. If any term herein conflicts with any term in the schedules, then the schedules shall take precedence and if there is a conflict in terms between the schedules, then Schedule 3 shall take precedence.
7. No rights shall accrue to any third party under the Agreement pursuant to The Contracts (Rights of Third Parties) Act 1999.
8. The Client shall observe the provisions of the Data Protection Act 1998 and shall indemnify the Company for any breach thereof.