

SEP Resource Solutions Ltd

a company incorporated in England and Wales under company number 12185457
and whose registered office is at is Unit 3 Hattersley Court, Ormskirk, Lancashire, L39 2AY (“**Employment Business**”);

Agreement for the Engagement and Provision of Services

This agreement is made on [INSERT DATE] (“**Effective Date**”)

BETWEEN

- (1) **SEP Resource Solutions Ltd**, a company incorporated in England and Wales under company number 12185457 and whose registered office is at is Unit 3 Hattersley Court, Ormskirk, Lancashire, L39 2AY, (“**Employment Business**”); and
- (2) [**Name of Umbrella Company**], a company incorporated in England and Wales under company number [insert registered company number] and whose registered office is at [insert registered office address] (“**Contractor**”).

IT IS AGREED as follows:

1. Interpretation and Definitions

- 1.1. Unless the context otherwise requires, references to the singular include the plural.
- 1.2. Headings contained in this Agreement are for reference purposes only and will not affect the intended meanings of the clauses to which they relate.
- 1.3. In this Agreement –

“**Agreement**” means the terms and conditions set out herein together with any issued Assignment Schedule to these terms;

“**Assignment**” means the period during which Contractor provides Services as set out in an Assignment Schedule;

“**Assignment Schedule**” means the schedule agreed between Employment Business and Contractor for each Assignment containing the particulars of the Assignment and Services;

“**AWR**” means the Agency Workers Regulations 2010 (as amended);

“**Client**” means the person, firm or corporate body together with any subsidiary or associated company as defined by section 1159 of the Companies Act 2006 requiring Services, and includes any third party to whom Representative provides services pursuant to this Agreement on behalf of Client;

“**Conduct Regulations**” means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended from time to time) and references to a particular Regulation are references contained therein;

“**Data Controller**” means (i) "data controller" in the Data Protection Act 1998 in respect of processing undertaken on or before 24 May 2018; and (b) "controller" in accordance with the General Data Protection Regulation (EU) 2016/679 in respect of processing undertaken on or after 25 May 2018;

“**Data Protection Legislation**” means all applicable laws and regulations, as amended or updated from time to time, in the United Kingdom relating to data protection, the processing of personal data and privacy, including without limitation, (a) the Data Protection Act 1998; (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (d) any legislation that replaces or converts into United Kingdom law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy resulting from the United Kingdom leaving the European Union;

“**Data Subject**” means as set out in, and will be interpreted in accordance with Data Protection Legislation;

“**Opted-Out**” means opted-out of the Conduct Regulations in accordance with Regulation 32(9);

“**Personal Data**” means as set out in, and will be interpreted in accordance with Data Protection Legislation;

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in connection with this Agreement;

“**Process**” means as set out in, and will be interpreted in accordance with Data Protection Legislation and “**Processed**” and “**Processing**” will be construed accordingly;

“**Qualifying Period**” means as defined within regulation 7 of the AWR;

“**Representative**” means the employee of Contractor, specified in the Assignment Schedule (including any substitute made in accordance with clause 2.6 below), who renders Services on behalf of Contractor;

“**Restricted Period**” means the twelve months following the end (howsoever arising) of the Assignment; and

“**Services**” means the services to be performed by Representative on behalf of Contractor for the benefit of Client pursuant to this Agreement.

2. The Services

- 2.1. Following a request from Client, Employment Business has requested Contractor and Contractor has agreed with Employment Business to provide Services to Client as detailed within an Assignment Schedule, on the terms and conditions of this Agreement.
- 2.2. Contractor will procure that Services will be undertaken by Representative.
- 2.3. Employment Business and Contractor shall agree an Assignment Schedule (or confirm their agreement in an Assignment Schedule) specifying Client, the fee payable by Employment Business, Representative, Services, such expenses as may be agreed, any notice period and any other relevant information.
- 2.4. Save as otherwise stated in this Agreement, Contractor and Representative will be entitled to supply its/their services to any third party during the term of this Agreement provided that this in no way compromises or is not to the detriment of the supply of Services, and provided there is no conflict of interest.
- 2.5. Contractor will procure that Representative will not, whether directly or indirectly through any company, partnership or person, solicit nor enter into any contract with Client or with any third party introduced to Representative by Client with whom Representative had material contact with during the Assignment, to provide any services of the same or a similar nature as Services during the Assignment or during the Restricted Period without Employment Business’s prior written consent, such consent may be withheld at Employment Business’s absolute discretion or granted subject to any conditions Employment Business may wish to impose.

- 2.6. Contractor may substitute the named Representative in the Assignment Schedule provided that -
 - 2.6.1. Services remain as detailed in the Assignment Schedule;
 - 2.6.2. Employment Business and/or Client is reasonably satisfied that the proposed substitute possesses all qualifications, experience, skills, resources and authorisations needed by Client or required by law to fulfil Services;
 - 2.6.3. the proposed substitute passes all relevant security checks;
 - 2.6.4. no delay or reduction in quality will occur due to the lack of technical or Client specific knowledge held by the substitute;
 - 2.6.5. if requested by Employment Business, Contractor provides, without charge, an effective handover to the proposed substitute to the reasonable satisfaction of Client; and
 - 2.6.6. Employment Business may reject any proposed substitute at its absolute discretion.
- 2.7. Clause 2.5 will not apply where Contractor and Representative have not Opted-Out and the Conduct Regulations apply to the Assignment.
- 2.8. Where the AWR applies to the Assignment and upon request from Contractor, Employment Business will request from Client information about the working and employment conditions that are applicable to, Client’s employees and workers, and where relevant, are applicable to workers and/or employees who undertake the same or broadly similar work as that of Representative during the Assignment. Upon receipt from Client of such information, Employment Business will provide this information to Contractor.

3. The Contract

- 3.1. This Agreement constitutes the entire agreement between Employment Business and Contractor, and it supersedes all previous agreements between the parties in relation to the subject matter hereof and governs all Assignments undertaken by Contractor. Contractor warrants that, in agreeing to enter into this Agreement, it has not relied on any statement or representations made by Employment Business or by Client.
- 3.2. No variation or alteration to this Agreement will be valid unless the details of such variation are agreed between Employment Business and Contractor and set out in writing and signed by both parties.
- 3.3. Contractor agrees it has accepted the terms of this Agreement and any issued Assignment Schedule where Representative commences the Assignment with Employment Business in relation to performing Services for Client.

3.4. Without prejudice to any rights accrued prior to termination, the obligations within clauses 1, 2.5, 9, 10, 11, 14, 15 and 16 will remain in force beyond the cessation or other termination (howsoever arising) of this Agreement.

4. Undertakings of Contractor

4.1. Contractor warrants to Employment Business that by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation that it owes to any third party. Contractor further warrants to Employment Business that Representative, by performing Services on behalf of Contractor, will not thereby be in breach of any obligation that it owes to any third party.

4.2. Where required as stated within the Assignment Schedule, Contractor confirms that Representative(s) has/have the necessary skills, experience, training, qualifications and any other authorisation which Client considers are necessary, or which are required by law or by any professional body to provide Services for the period of the Assignment. Contractor shall, on request, provide proof of compliance with this clause.

4.3. Contractor warrants and represents that all statements, whether oral or written, made by it and by Representative and documentation Contractor/Representative provides, in relation to this Agreement and the performance of Services hereunder, are true and accurate and will be kept up to date.

4.4. Contractor warrants that Services will be performed with a high degree of professional skill and care.

4.5. Contractor will procure that Representative works such hours as are necessary to perform Services and that Representative will not unreasonably fail to provide Services during hours required by Client for the convenience of Client and for the proper performance of Services. Where minimum hours are specified in the Assignment Schedule, Contractor warrants that it will ensure that Representative will work for such minimum hours.

4.6. Contractor warrants that Representative shall follow all applicable rules and procedures of Client relevant to independent contractors and the delivery of Services and will act in a professional manner at all times when at the premises at which Services are to be performed.

4.7. Contractor warrants that it and Representative shall, in relation to Services, adhere to all applicable laws, statutes and regulations as enacted from time to time.

4.8. Contractor warrants that pre-employment checks have been carried out in relation to each Representative and that each Representative has valid and subsisting leave to live, work and to remain lawfully in the UK for the duration of the Assignment.

4.9. Contractor warrants that –

4.9.1. it is not a Managed Service Company as defined in the Income Tax (Earnings and Pensions) Act 2003 (as amended);

4.9.2. it is a company registered within the United Kingdom; and

4.9.3. Representative is engaged by Contractor on a contract of employment;

4.9.4. Contractor is responsible for and pays the correct PAYE tax and NICs in accordance with the relevant legislation in respect of any Representative.; and

4.9.5. where applicable, Contractor operates a legitimate travel and subsistence scheme for its employees in strict compliance with the relevant tax law and HMRC guidance and will check the accuracy of the expenses claims made by any Representative.

4.10. Contractor warrants that it will ensure the relevant provisions of this Agreement are included within the contract between Contractor and Representative and will ensure that Representative is fully aware of their obligations in connection with this Agreement.

4.11. Contractor warrants that it will procure that, where Representative is eligible in relation to the Assignment hereunder, Representative is enrolled (or given the opportunity so to do) in a pension scheme in accordance with The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2014 and Contractor hereby agrees that it will indemnify and keep indemnified Employment Business and/or Client from any demands made against them in connection with this clause 4.11.

4.12. Contractor warrants that Representative is employed by Contractor and that Contractor is a company registered within the United Kingdom. Contractor will, on request, provide proof of compliance with this clause as maybe required by Employment Business from time to time.

4.13. Contractor warrants that it will make payment of the correct PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of Representative's remuneration for Services that will be treated as United Kingdom derived employment income in its entirety in accordance with all relevant legislation and Contractor will indemnify and keep indemnified Employment Business and/or Client from any demands made against them in connection with this clause 4.13.

4.14. Contractor will, on request, provide proof of compliance with this clause 4 as may be required by Employment Business from time to time.

5. Obligations of Contractor

5.1. Contractor will and will procure Representative will -

- 5.1.1. not engage in any conduct detrimental to the interests of Employment Business or Client which includes any conduct that may bring Employment Business or Client into disrepute and which may result in the loss of custom or business;
 - 5.1.2. comply with any statutory or other reasonable rules or obligations including but not limited to those relating to health and safety, site security and IT usage and security during the Assignment to the extent that they are applicable while performing Services and to take all reasonable steps to safeguard its own safety, the safety of Representative and the safety of any other person who may be affected by its actions during the Assignment;
 - 5.1.3. furnish Client and/or Employment Business with any progress reports as may be requested from time to time;
 - 5.1.4. notify Employment Business forthwith in writing if Contractor should become insolvent, dissolved or subject to a winding up petition or Representative becomes bankrupt;
 - 5.1.5. where required, provide and insure at its own cost any such necessary equipment as is reasonable for the performance of Services and ensure that any computer equipment and associated software which it provides for the purpose of providing Services contains up-to-date anti-virus protection; and
 - 5.1.6. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to Client except when required to do so in the course of its duties under the Assignment in which event any such item will belong to Client or Employment Business as appropriate.
- 5.2. Contractor will procure that Representative will obtain the signature/electronic approval of an authorised representative of Client on a timesheet in a format provided by Employment Business and submit timesheets to Employment Business, in accordance with Employment Business's procedure, and no later than within 1 month of the period to which they relate or as otherwise directed in writing by Employment Business.
 - 5.3. Contractor warrants and represents that the hours Representative records on the timesheet are true and accurate.
 - 5.4. If Representative is unable or unwilling for any reason to undertake Services during the course of an Assignment, whether due to ill health or otherwise, Contractor/Representative should inform Employment Business as soon as possible.
 - 5.5. Contractor acknowledges, and will procure that Representative acknowledges, that failure to deliver and obtain Client signature/electronic approval of timesheets and in accordance with Employment Business's procedure regarding such may delay payment.
 - 5.6. Contractor will procure that Representative will, at the end of the Assignment or on demand, at its own expense, return to Employment Business or to Client (as directed) all property of Client including, but not limited to, all equipment, documents (including copies) and other such materials, security passes, electronic storage devices and keys.
 - 5.7. Nothing in this Agreement should be construed to render any Representative an employee or a worker of either Employment Business or Client. Contractor will ensure that Representative does not hold himself/herself out as an employee or a worker or an agent of either Employment Business or of Client.
 - 5.8. Contractor will procure that Representative shall arrange any appointments, including without limitation those relating to medical conditions, outside of the hours required by Client to deliver Services; save where Client agrees otherwise in writing.
 - 5.9. Neither Employment Business nor Client will be required or obliged to bear the cost of any training that Representative may require in order to perform Services.
 - 5.10. Contractor agrees to promptly, upon request, provide evidence relating to the construction and operations of Contractor's company and details of Representative's status/engagement in order to assist Employment Business to comply with its contractual and legal obligations.
 - 5.11. Contractor agrees, and will procure that Representative agrees, to promptly provide to Employment Business any information requested by Employment Business that may be required to satisfy statutory legislation and reporting requirements relating thereto.
 - 5.12. Save where agreed in writing by Employment Business, Contractor agrees not to sub-contract or assign to any third party any of Services which it has agreed to perform under an Assignment in accordance with this Agreement.
- 6. Invoicing**
 - 6.1. Contractor will invoice Employment Business the amount due from Employment Business to Contractor in respect of Services at the rate set out in the Assignment Schedule. Invoices must be received by Employment Business no later than three months following the period to which it relates (or as otherwise directed by Employment Business). Contractor's invoice must display Contractor's name, name of Representative, company registration number and, where applicable, the VAT number and any VAT due on the invoice or in a format as otherwise stated by Employment Business.

- 6.2. Employment Business will not pay any fees to Contractor (a) unless an invoice has been properly submitted by Contractor in accordance with clause 6.1 above and (b) unless and until Client has authorised or signed the relevant time recording process and (c) the hours claimed are true and accurate.
- 6.3. Unless otherwise stated in the Assignment Schedule, Contractors will not be entitled to claim any expenses from Employment Business or Client. Where applicable, Contractor will invoice Employment Business for business expenses agreed in writing by Employment Business. Contractor will, on request, provide receipts in relation to invoiced expenses and Employment Business may withhold payment of expenses subject to receiving such receipts. VAT on expenses must be shown separately.
- 6.4. Without prejudice to Employment Business's rights and remedies under this Agreement or in law, whenever a sum of money is recoverable from or payable by Contractor -
- 6.4.1. in relation to an overpayment;
- 6.4.2. for any sum that Contractor is liable to pay to Employment Business in respect of any breach of this Agreement; or
- 6.4.3. from any indemnity given in this Agreement, Employment Business may deduct that sum from any sum then due or which at any later time becomes due to Contractor under this Agreement.
- 6.5. Clause 6.2(b) will not apply if Contractor and Representative have not Opted-Out and the Conduct Regulations apply to the Assignment.
- 7. Charges/Fees**
- 7.1. Subject to clause 7.3 and to the receipt of Contractor's invoice in accordance with clause 6, Employment Business will pay Contractor for Services in accordance with the fees specified in the Assignment Schedule, plus any applicable VAT.
- 7.2. Contractor will be wholly responsible for the correct payment of PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of Representative and will indemnify Employment Business and/or Client from any demands made against them in connection with this clause.
- 7.3. Payments will be made to Contractor within 30 days of receipt of a valid invoice or as otherwise specified in the Assignment Schedule.
- 7.4. If Contractor or Representative is unable or unwilling for any reason to provide Services in the course of the Assignment then no fee will be payable by Employment Business to Contractor during any period that Services are not provided.
- 7.5. If Employment Business has reason to believe that Client may not pay Employment Business its invoices (or parts of them) in relation to Representative, Contractor agrees, and will procure Representative agrees, to provide Employment Business and/or Client (as is appropriate) with any reasonably requested information, explanations and/or written statements relating to the Assignment/Services and with any reasonable assistance necessary to help Employment Business obtain such payment from Client.
- 7.6. Where the Conduct Regulations apply to the Assignment, Employment Business shall comply with Regulation 12 of Conduct Regulations in respect of work done by Representative during Assignment.
- 7.7. Where the AWR applies and following the Qualifying Period, Employment Business will use reasonable endeavours to obtain agreement from Client to increase and/or adjust, where applicable in accordance with the AWR, the fees paid by Client to Employment Business for Services of Representative. Upon such agreement and subject always to clause 7, any such adjustment to Representatives fees will be set out and issued within a revised Assignment Schedule under this Agreement.
- 7.8. For the avoidance of doubt and subject to any agreement by the parties to the contrary, Contractor will not be entitled to receive payment from Employment Business or from Client for time not spent on Assignment whether in respect of holidays, illness or absence or for any other reason.
- 8. Term of the Agreement**
- 8.1.1. Without prejudice to clause 3.4, this Agreement will commence on the Effective Date and will continue until terminated in accordance with any of the clauses 8.2, 8.38.4, 8.5 or 8.6.
- 8.2. Either party may terminate this Agreement without cause by giving not less than 4 weeks' notice in writing provided that any Assignment will continue under this Agreement until such time as terminated under clause 8.3 or 8.4 or until the End of Assignment date stated in the relevant Assignment Schedule.
- 8.3. Either party may terminate an Assignment without cause by giving the notice in writing stated within the relevant Assignment Schedule. Where an Assignment Schedule does not provide Contractor with a right to give notice to end the Assignment early, Contractor may request Employment Business to end the Assignment early, in which case Employment Business may, at its sole discretion, use reasonable endeavours to agree early termination of the Assignment with Client.
- 8.4. Notwithstanding clauses 8.2 and 8.3, Employment Business may without liability end this Agreement and/or any specific Assignment and instruct Contractor to procure that Representative ceases work on the Assignment immediately or on short notice at any time, where -

- 8.4.1. Contractor or Representative has committed any serious or persistent breach of any of its obligations or undertakings under this Agreement;
 - 8.4.2. Client believes Contractor and/or Representative is incompetent or has been negligent in the performance of Services;
 - 8.4.3. Client reasonably believes that Contractor and/or Representative has not observed any condition of confidentiality applicable to Contractor and/or to Representative from time to time;
 - 8.4.4. for any reason Representative proves unsatisfactory to Client;
 - 8.4.5. Employment Business receives any information regarding the unsuitability of Contractor or Representative to provide Services in the course of the Assignment;
 - 8.4.6. Contractor becomes insolvent, goes into administration, is dissolved, is subject to a winding up petition or Contractor in the reasonable opinion of Employment Business is suffering severe financial distress and may not be in a position to pay its liabilities, including Representative remuneration, as they fall due;
 - 8.4.7. any member of Contractor's staff or any Representative is guilty of any fraud, dishonesty or serious misconduct;
 - 8.4.8. performance of Services in the course of the Assignment is prevented by the incapacity of Representative;
 - 8.4.9. Employment Business has reason to believe Client may not be able to pay any or all of Employment Business's invoices;
 - 8.4.10. Representative informs Employment Business that he/she no longer wishes to be supplied by Contractor;
 - 8.4.11. Client reasonably believes that Contractor and/or Representative has damaged or is damaging the reputation of Client;
 - 8.4.12. whereupon an event of force majeure or any other incapacity of Contractor/Representative affects the delivery of Services; or
 - 8.4.13. Employment Business has reason to believe Client may not be able to pay any or all of Employment Business's invoices.
- 8.5. Notwithstanding clauses 8.2 and 8.3, Contractor acknowledges that the continuation of the Assignment is subject to and conditioned by the continuation of the contract entered into between Employment Business and Client. In the event that the contract between Employment Business and Client is terminated for any reason this Agreement and/or the relevant Assignment/s will cease with immediate effect without liability to Employment Business. For the avoidance of doubt and subject to clause 7.1, Contractor's invoices will be paid for work that has been done by Representative prior to termination of the Agreement or Assignment/s under this clause.
 - 8.6. Notwithstanding clauses 8.2 and 8.3, where Employment Business receives notice from Client to terminate the Assignment or not to proceed with the Assignment, Employment Business may, with immediate effect and without liability, terminate this Agreement and/or the relevant Assignment/s without liability to Contractor or to Representative. For the avoidance of doubt, this includes termination on any date prior to the date on which Representative is due to commence performing Services under the Assignment.
 - 8.7. Contractor agrees that Employment Business may notify Contractor and/or Representative verbally of termination of Assignment where, in the reasonable opinion of Employment Business, the situation merits such including (without limitation) where such termination is required to be with immediate effect.
 - 8.8. Contractor acknowledges and agrees that Employment Business is not obliged to provide any reason or further explanation to Contractor or to Representative in connection with termination under clause 8, whether or not such a reason is provided by Client to Employment Business. Furthermore, in the event a reason is provided whether by Client or by Employment Business, Employment Business is not liable to Contractor or to Representative in relation to the content of such reason.
 - 8.9. Failure by Contractor to give notice of termination as required in accordance with this Agreement will constitute a material breach of contract and Contractor agrees to indemnify and keep indemnified Employment Business from any and all losses in connection with its breach of this clause 8.9.

For the avoidance of doubt, termination pursuant to this clause 8.4 will take precedence over termination pursuant to clause 8.2 and 8.3 and, for the avoidance of doubt, over any notice period set out in the applicable Assignment Schedule.

9. Intellectual Property

- 9.1. Contractor warrants and will procure in respect of Representative that Contractor and Representative hereby assign to Client (or to Employment Business for onward transfer to Client where directed so to do by Employment Business) all present and future copyright, title and interest of whatever nature (including but not limited to copyright and patent application rights), topography rights, design rights, trademarks, rights in databases, sui generis rights, trade secrets (whether registered or unregistered) and other confidential information, know-how and all other intellectual property rights of a similar nature in any part of the world and all other intellectual property rights in original work and all applications and rights to apply for the protection of any of the foregoing, produced, prepared or provided by Representative, in whatever media, in relation to or arising from the performance of the Assignment prepared for Client or produced by any Representative in connection with an Assignment under this Agreement, and that the aforementioned rights will vest in and remain the property of Client throughout the world free from any interest of Contractor, Representative or any third party or parties.
- 9.2. Contractor will do anything and will procure that Representative will do anything that Client may reasonably require in order effectively to vest such rights in Client (or to Employment Business for onward transfer to Client where directed so to do by Employment Business) or such third party as Client specifies or to evidence the same (whether before or after the termination of this Agreement).
- 9.3. Contractor acknowledges and agrees, and will procure that Representative acknowledges and agrees, that Client retains ownership of all intellectual property rights of whatever nature and, if registrable, whether registered or not, in the documents or other material and data and other information provided to or provided by Representative in relation to an Assignment. For the avoidance of doubt, Client will not be deemed to have granted Contractor or Representative any licence to use the documents or other material and data or other information other than solely for the purposes of the relevant Assignment.
- 9.4. Contractor will, and will procure that Representative will, promptly disclose to Client and to Employment Business any idea, method, invention, discover, design, concept or other work made or created by Representative in relation to Services provided during the Assignment.
- 9.5. Contractor warrants that Services provided are not in breach of the intellectual property rights of any third party.

- 9.6. Contractor will indemnify and keep indemnified Client and Employment Business from (without limitation) any and all actions, claims, proceedings, settlements, legal fees, costs, expenses, damages, demands, losses and liabilities whatsoever and however incurred resulting or arising out of any claim by any third party that the use or possession of work performed or delivered by Contractor or by Representative in connection with this Agreement infringes the intellectual property rights of that third party.
- 9.7. Contractor hereby, and will procure that Representative does, irrevocably and unconditionally waive in favour of Client any and all moral rights conferred on it and/or Representative by statute for any intellectual property, design or copyright work in which rights are (or should be) vested in Client pursuant to this clause 9. Contractor hereby warrants that it has obtained the same undertaking from Representative.

10. Confidentiality

- 10.1. Without prejudice to every other duty not to disclose any and all information given to Contractor or to Representative or gained in confidence in connection with this Agreement (including, without limitation, information provided by or pertaining to Employment Business) Contractor will not and will procure that Representative will not at any time, whether during or after the Assignment, disclose to any person or make use of any of the trade secrets, confidential or sensitive (including commercially sensitive) information of Client, of Client's customers and of Employment Business; save where required by law. For the purposes of this clause, confidential or sensitive information includes information relating to their business methods, plans, systems, finances or projects, training and development and research or development projects, their trade secrets, the identity and business affairs of their customers and clients, potential customers and clients, the provision of products or services to which they attach confidentiality or in respect of which they hold an obligation to a third party which comes to either parties' attention or possession, including information that the Contractor or Representative creates, develops, receives or obtains in connection with an Assignment and which is regarded or could reasonably be regarded as confidential, whether or not any such tangible information is marked 'confidential'.
- 10.2. Contractor will, and will procure that Representative will, both during and after the Assignment, keep confidential from any third party and from Client the rates paid to Contractor by Employment Business.
- 10.3. Contractor agrees that if Employment Business and/or Client suffer disclosure of their confidential information through breach of clause 10.1, Employment Business or Client (as the case may be) will be entitled, in addition to any and all other remedies, to temporary and injunctive relief.

11. Data Protection

11.1. The parties hereto

- 11.1.1. acknowledge this clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;
- 11.1.2. acknowledge that for the purposes of the Data Protection Legislation, Employment Business is a Data Controller and the Contractor is a Data Controller but they are not Joint Controllers (as defined in the Data Protection Legislation) unless a specific agreement is made to that effect between the parties;
- 11.1.3. agree that the Representative is not Client's Data Processor (as defined within Data Protection Legislation) save where agreed otherwise within an Assignment Schedule and subject to additional terms and conditions;
- 11.1.4. warrant to each other that any Personal Data relating to a Data Subject, whether provided by Client, by Employment Business, by Contractor or by Representative, will be used, Processed and recorded by the receiving party in accordance with Data Protection Legislation and for the purposes of fulfilling this Agreement;
- 11.1.5. will ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 11.1.6. will take appropriate technical and organisational measures to adequately protect all Personal Data against accidental loss, destruction or damage, alteration or disclosure;
- 11.1.7. will provide reasonable assistance to the other in responding to any request from a Data Subject with respect to data subject access requests and other data subject rights, data security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 11.1.8. will promptly notify the other on becoming aware of a suspected or actual Personal Data breach relevant to Personal Data transferred pursuant to this Agreement; and
- 11.1.9. will maintain complete and accurate records and information to demonstrate their compliance with this clause 11.1.

11.2. Contractor understands, and will ensure that Representative understands that in providing Services, Personal Data relating to Representative will be collected by Employment Business and passed to Client in the course of the administration of the agreement between Employment Business and Client. Contractor will ensure Representative understands that in providing Services, Client and/or Employment Business, or anyone processing data on behalf of Client and/or Employment Business, may transfer Personal Data relating to Representative outside the European Economic Area.

11.3. The Contractor will, and will procure that Representative will, when requested so to do by Employment Business, make available to Employment Business all information necessary to demonstrate compliance with the obligations associated with Data Protection Legislation and clause 11 and will allow for audits and inspections (upon reasonable notice) in order to demonstrate compliance.

11.4. Notwithstanding clauses 11.1.7 and 11.1.8, in the event of a suspected or actual Personal Data Breach, Contractor will promptly (at its own expense) provide such information, assistance and cooperation and do such things as Employment Business may request to -

- 11.4.1. investigate and defend any claim or regulatory investigation;
- 11.4.2. mitigate, remedy and/or rectify such breach; and
- 11.4.3. prevent future breaches.

11.5. Contractor will not, and will procure that Representative will not, release or publish any filing, communication, notice, press release or report concerning any Personal Data Breach without the prior written approval of Employment Business.

11.6. Contractor understands, and will ensure that Representative understands, that in providing Services Personal Data may be Processed in order to comply with Employment Business's and Client's or associated employment intermediaries' legal obligations, including reporting Assignment details to HMRC. Contractor warrants that Representative is aware of such Processing (including any such transfer) on the understanding that any Personal Data is processed fairly and lawfully in accordance with the Data Protection Legislation. Contractor acknowledges, and will ensure Representative acknowledges, that information provided in relation to clauses 5.10 and 5.11 may be disclosed by Employment Business to a third party specifically for the purposes of complying with statutory legislation.

12. Relationship between Employment Business, Contractor, Representative and Client

12.1. This Agreement, or any Assignment hereunder, is not intended by the Parties to constitute or give rise to a contract of service or an employment contract.

- 12.2. Employment Business will not charge Representative for work-finding services.
- 12.3. Upon the termination or expiry of this Agreement and/or any Assignment hereunder, howsoever arising, Employment Business will not be obliged to offer, and Contractor and Representative will not be obliged to accept, any further assignments, contracts, engagements, projects or request for services of any type whatsoever.
- 12.4. Contractor and Representative have no authority to act or contract on behalf of Employment Business or Client and will not, and will procure that Representative will not, hold itself/himself/herself out as capable of doing so. Contractor will not, and will procure that Representative will not, purport to bind Employment Business or Client in any way.
- 12.5. Contractor acknowledges to Employment Business that its services are supplied to Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to Representative (including, without limitation, the correct payment of taxation and National Insurance Contributions) will fall upon and be discharged wholly and exclusively by Contractor. If any person should seek to establish any liability or obligation upon Employment Business or upon Client on the grounds that Representative is an employee or worker (or should be treated as such for the purpose of employment rights, benefits and/or taxation) of Employment Business or of Client, Contractor agrees to indemnify and keep indemnified Employment Business and/or Client and to keep Employment Business and/or Client, as the case may be, indemnified in respect of any such liability or obligation and any related (without limitation) costs, expenses, legal expenses, proceedings, settlements or other losses which Employment Business or Client incur.
- 12.6. Save as required by law, neither Contractor nor Representative will be entitled to receive from Employment Business or from Client, sickness pay, holiday pay, long service leave or any other similar entitlement.
- 12.7. Contractor will arrange payment of all taxation and all other legally required payments in respect of the fees payable hereunder, and hereby indemnifies and will keep indemnified Employment Business and Client against any liability in respect of taxation, National Insurance, fines, penalties or interest pertaining thereto which may be imposed upon or accrued by Employment Business or by Client as a result of this Agreement and any Assignment.
- 12.8. In the event of the breach of clause 12.4 above, any contract or agreement purportedly entered into by Contractor or Representative as an agent for either Employment Business or Client will be deemed to have been made as if Contractor or Representative, as the case may be, acted and contracted as principal.

13. Notices

- 13.1. Save as stated within clause 8.7, any notice required to be given under this Agreement shall be delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in this Agreement.
- 13.2. Notices will be deemed to have been given and served,
 - 13.2.1. if delivered by hand, at the time of delivery if delivered before 5.00pm on a business day or in any other case at 10.00am on the next business day after the day of delivery; or
 - 13.2.2. if sent by facsimile or e-mail, at the time of despatch if despatched on a business day before 5.00 p.m. or in any other case at 10.00 a.m. on the next business day after the day of despatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant business day, the recipient informs the sender that the facsimile or e-mail message was received in an incomplete or illegible form;
- 13.3. Contractor agrees that notices may be sent by or provided to Representative for or on behalf of Contractor in relation the relevant Assignment under this Agreement.

14. Liability

- 14.1. Contractor agrees to indemnify and keep indemnified Employment Business and Client in full from and against any and all, actions, claims, demands, proceedings, judgements, damages, losses (including indirect or consequential), liabilities, costs, charges and expenses (including legal fees), settlements, fines, interest and penalties of whatever nature and in whatever jurisdiction, which may be instituted, made or alleged against, or suffered or incurred by Employment Business or by Client, arising from or in connection with –
 - 14.1.1. any breach of Contractor's or Representative's obligations under this Agreement;
 - 14.1.2. any deliberate or negligent act or omission of Contractor and/or of Representative;
 - 14.1.3. any assignee or sub-contractor to whom Contractor assigns or sub-contracts the performance of Services (where permitted by Employment Business in writing);
 - 14.1.4. the loss or destruction of or damage to any property of Client which is caused by Contractor/Representative;
 - 14.1.5. death of or personal injury to any person caused by Contractor/Representative in connection with any Assignment (except, for the avoidance of any doubt, to the extent that this is caused by negligence of Employment Business or Client);

- 14.1.6. any claim or allegation by Representative regarding the termination or expiry of any Assignment of Representative;
 - 14.1.7. any claim or allegation that Representative is an employee of Employment Business or of Client;
 - 14.1.8. any claim or demand, howsoever arising, against Employment Business or Client for any income tax and/or employee's and/or employer's National insurance contributions and/or any other taxation relating to any Representative; or
 - 14.1.9. any claim against Employment Business or Client arising out of any act or omission of any Representative including (without limitation) any act of discrimination.
- 14.2. Where Contractor or Representative is in breach of this Agreement which results in Client terminating the agreement between Employment Business and Client or terminating the Assignment, Contractor agrees, without prejudice to any other remedy of Employment Business, to indemnify Employment Business for any loss of Employment Business's fee that would have been charged to Client relating to the remaining period of the Assignment.
- 14.3. Contractor shall ensure and maintain the provision of adequate Employers Liability insurance, Public Liability insurance, Professional Indemnity insurance and any other suitable policies of insurance in respect of Contractor, of Representative and the Representative's acts, errors or omissions in the provision of Services and any and all indemnities relating thereto within this Agreement. Upon request, Contractor will make a copy of the policy available to Employment Business. In addition to this clause 14.3, Employment Business may specify in the Assignment Schedule the level of insurance cover and any additional insurance that Contractor (or Representative) is required to maintain.
- 14.4. Without prejudice to any other rights and/or remedies Employment Business has within this Agreement or at law, Contractor is liable for any defects or deficiencies arising in relation to Services performed by Representative in the course of the Assignment and will, where requested, rectify at its own cost and in its own time such defects or deficiencies as may be capable of remedy within the period required by Client or, where no such specific period is required in the event then within a reasonable period of time from such request.
- 14.5. Except where stated otherwise within this Agreement and save as required by law, neither party will be liable to the other in connection with this Agreement for –
- 14.5.1. loss of profits, loss of business, loss of revenue, depletion of goodwill, pure economic loss, loss of anticipated savings, damages, charges, expenses and/or similar losses; or
 - 14.5.2. any special, indirect or consequential losses.
- 14.6. Save as required by law, Employment Business will not be liable to Contractor or Representative for any loss, expense, damage or delay howsoever arising (whether directly or indirectly) in connection with this Agreement, save where expressly stated otherwise within this Agreement.
- ## 15. Contract Renewal
- 15.1. An Assignment may be extended by mutual agreement by the Parties signing a further Assignment Schedule.
- 15.2. Notwithstanding clause 15.1 above, if Representative supplied under this Agreement continue to perform Services or any other services for Client at the express request of Employment Business beyond the End of Assignment date set out within the applicable Assignment Schedule, then the Assignment (and for the avoidance of doubt, this Agreement) will be deemed to be extended for an additional period until such time as such further Assignment Schedule is signed or further agreement is entered into between the Parties ("the Deemed Period").
- 15.3. The terms and conditions contained herein will be deemed to apply in respect of any Services or other services provided by Representative during the Deemed Period, except as stated in clause 15.4 below.
- 15.4. In addition to the rights of the Parties in connection with clause 15.3 above, Employment Business may terminate the Deemed Period with immediate effect, and any notice period detailed in the relevant Assignment Schedule will not apply.
- ## 16. General
- 16.1. Any failure by Employment Business to enforce at any particular time any one or more of its rights under this Agreement will not be deemed a waiver of such rights or of the right to enforce this Agreement subsequently.
- 16.2. If any provision, clause or part-clause of this Agreement is held to be invalid, void, illegal or otherwise unenforceable by any judicial body, the remaining provisions of this Agreement will remain in full force and effect to the extent permitted by law.

- 16.3. Save as provided in this clause 16.3, no provision of this Agreement will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 ("the Act"). This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act. Client named on the Assignment Schedule will have the benefit of the provisions and the indemnities within this Agreement where stated within the clauses in this Agreement. Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement may be varied, amended or modified without the consent of any such third party.
- 16.4. For the purposes of this Agreement, Employment Business is acting as an employment business as defined within the Conduct Regulations; save where a permanent placement results, in which case Employment Business will be acting as an employment agency as defined within the Conduct Regulations.
- 16.5. If there is a conflict between these terms and conditions and the Assignment Schedule, these terms and conditions will take precedence save where expressly provided for within these terms and conditions or where additional terms/conditions or variations are expressly stated within the Assignment Schedule or as otherwise agreed in writing by Employment Business.
- 16.6. The parties agree that the manner in which the Representative provides Services and whether s/he is subject to the supervision, direction or control of any party, including the Client, or to the right thereof, will be a matter of fact on an individual Assignment basis, save that it is recognised that pursuant to S339A and 668B of ITEPA 2003 under the Finance Act 2016 it is assumed that the Representative is subject to the supervision, direction or control of the Client save where shown otherwise to the satisfaction of the Contractor, acting in full compliance with its statutory obligations.
- 16.7. Contractor shall comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption (Anti Bribery Laws) which includes (without limitation) compliance with the Bribery Act 2010. Contractor will not, and will procure that Representative will not, offer, give or agree to give to any employee or representative of Employment Business or of Client or of any third party any gift, personal financial incentive or other consideration that could act or reasonably be perceived to act as an inducement or a reward for any act or failure to act connected to the performance of this Agreement and the arrangement of Assignment.
- 16.8. Contractor shall comply with all applicable anti-slavery and human trafficking laws and regulations including (without limitation) the Modern Slavery Act 2015.

17. Governing Law and Jurisdiction

- 17.1. This Agreement will be construed in accordance with the laws of England and Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement will be subject to the exclusive jurisdiction of the courts of England and Wales.

Client Signature:

Print Name:

Date:

For and on behalf of [Client Company Name]

Employment Business Signature:

Print Name:

Date:

For and on behalf of SEP Resource Solutions Ltd