

COPY

Terms of Business for the provision of: Interim Management Services

RECITALS

- (A) 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 attached schedules ("**the Schedules**") ("**the Consultancy Services**").
- (B) 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:

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| "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; |
| "Fees" | means the Fees 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 Fees 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 vitæ 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;

“Transfer 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 Fees, including such items arising out of or resulting from actions, proceedings, claims and demands;

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 Schedules (“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 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 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 consultant 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. EXPENSES

- 3.1. The Client agrees to reimburse directly to the Consultancy all and any necessary and reasonable travel and/or other out-of-pocket expenses, properly incurred by the Consultant in providing the Services and in accordance with the Client's normal reimbursement of expense rules and procedures.

4. VERIFICATION OF EXECUTION OF THE CONSULTANCY SERVICES

- 4.1. At the end of each month of the Assignment the Client shall verify the execution of the services provided by the Interim Company by signature of a form provided to the Client for this purpose. This can be gained electronically or by hard copy.
- 4.2. Verification of the execution of the services by the Client constitutes acceptance that the Interim Company's services have been provided satisfactorily and in accordance with these Terms. Failure to verify execution in writing does not affect the Client's obligation to pay the Fees 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.
- 4.3. 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.

5. FEES

- 5.1. The Client agrees to pay the Fees. VAT is payable at the applicable rate on the entirety of the Fees.
- 5.2. All fees will be invoiced electronically by Rialto to the Client on a monthly basis and are payable within 14 days. All invoices will be addressed and sent to the Client at the Client's address appearing in schedule 1 of this Agreement. The Client agrees to make full payment in respect of such invoices by electronic bank transfer within 14 days of the invoice date
- 5.3. The Employment Business reserves the right to vary the Fees 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.
- 5.4. The Fees are invoiced to the Client on a monthly basis and are payable within 14 days by electronic transfer to Rialto.

- 5.5. 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.
- 5.6. With regard to payment of all and any Rialto invoices (relating to any monies due to Rialto from the Client pursuant to this Agreement), time shall be of the essence and failure by the Client to pay any Rialto invoice within 20 days of the invoice date may be regarded by Rialto (entirely at its discretion) as a fundamental breach of this Agreement by the Client, thereby enabling Rialto (at its discretion) to immediately withdraw the Services temporarily or permanently (if the latter, so terminating this Agreement forthwith and without further notice but without prejudice to Rialto's right to claim and to be paid all and any monies due from the Client in respect of the Services provided up to and including the date of termination).
- 5.7. 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. TRANSFER FEES

- 7.1. In appropriate cases Rialto reserves the right to charge the Client a transfer fee ("the Transfer Fee") as referred to below
- 7.2. For the purposes of clause 7 of this Agreement, the following terms shall have the following meanings:-
 - (i) "Supply" shall mean where the Consultancy Staff has already commenced work on the Project;
 - (ii) "Temp-to-Perm" shall mean where the Consultancy staff either transfers to or is subsequently taken on directly by the Client
 - (iii) "Temp-to-Third Party" shall mean where the Client introduces the Consultancy Staff to another party to whom the Consultancy Staff then transfers or by whom he/she is subsequently taken on directly
 - (iv) "Engagement Date" shall mean the date when the transfer of the Consultancy Staff (or the taking on of the Consultancy Staff directly by the Client or other party) takes place
- 7.3. In the event of there being a Supply and a Temp-to-Perm or a Temp-to-Third Party situation, Rialto shall be entitled to charge the Client (and the Client shall pay to Rialto) the Transfer Fee referred to below
- 7.4. In the event of there being no Supply but where there has been an introduction of the Consultancy Staff to the Client by Rialto, then in the case of a Temp-to-Perm or Temp-to-Third Party situation, Rialto shall be entitled to charge the Client (and the Client shall pay to Rialto) the Transfer Fee referred to in clause 4.5 below
- 7.5. The Transfer Fee in the situations referred to above shall be 18% of gross annual fees anticipated (namely, 18% of 220 days multiplied by the Normal Day Rate Fee) charged on a 24 month reducing basis dependent on when the Engagement Date is. Thus, for example, the Transfer Fee will be 23/24ths of the 18% figure after 1 month from the Project Commencement Date, reducing to 1/24th of the 18% figure after 23 months from the Project Commencement Date. Should there be a gap in service between the end of the project work

and the commencement of direct employment by the client, then this gap will not be counted towards the reduction in transfer fee. Only complete months of fully paid fees count towards the reduction.

- 7.6. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.
- 7.7. VAT is payable on the Transfer Fee

8. TERMINATION OF THE ASSIGNMENT

- 8.1. Other than as provided below, during the first two months from the Project Commencement Date, neither Rialto nor the Client shall have the right to terminate this Agreement. However, following the expiry of such two month period, this Agreement may be terminated by Rialto or the Client by either giving to the other not less than one month's written notice.
- 8.2. Notwithstanding the provisions of clause 8.1 the Client may terminate the Assignment forthwith by notice in writing to the Employment Business where:
 - 8.2.1. the Consultancy has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Consultancy Services; or
 - 8.2.2. the Client reasonably believes that the Consultancy has not observed any condition of confidentiality applicable to the Consultancy from time to time; or
 - 8.2.3. the Client reasonably considers that the Consultancy's provision of the Consultancy Services is unsatisfactory.
- 8.3. The Employment Business may terminate an Assignment forthwith by notice in writing if:
 - 8.3.1. 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 7 days of receiving written notice from the Employment Business to do so; or
 - 8.3.2. 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
 - 8.3.3. 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
 - 8.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client; or
 - 8.3.5. 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

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 Schedule 1 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 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.

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.

15. GOVERNING LAW AND JURISDICTION

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