



FRP Transition
10 Furnival Street
London EC4A 1YH
Tel: +44 (0)20 3005 4000
Fax: +44 (0)20 3005 4400
www.frptransition.com
www.frpadvisory.com

THIS AGREEMENT dated [] is made BETWEEN:

- (1) **FRP Transition**, a trading division of **FRP Advisory LLP** of 10 Furnival Street, London, EC4A 1YH ("**Transition**"); and
- (2) [] of [] (the "**Client**")

1 **Definitions**

In this Agreement the following definitions apply:

"Agreement" means this written agreement including its Schedule;

"Client" means any Person to whom Transition agrees to introduce a Company;

"Associated Company" of either party to this Agreement means the holding and subsidiary companies of that party and any subsidiary companies of that party's holding companies such terms having the meanings ascribed by Section 1159 of the Companies Act 2006;

"Assignment" means the supply by Transition of the Services to the Client;

"Client Invoice" means the invoice and/or charges by Transition to the Client in respect of Services including VAT;

"Confidential Information" means all information whether recorded or not (and, if recorded, in whatever form, in whatever media and by whomever recorded) which is a trade secret or confidential or private or information that is not generally known or easily accessible to the public (either as an individual item of information or as part of a body of knowledge) including the information set out or referred to in clause 10.4;

"Company" means the limited company supplied by Transition to the Client pursuant to this Agreement (and, save where otherwise indicated, includes any director, officer, employee or representative thereof and any third party to whom the provision of the Services is assigned or subcontracted in accordance with the provisions of this Agreement);

"Daily Rate" means the Fees payable by the Client to Transition for each day during which the Services are provided to the Client as set out in Schedule 1 or as agreed in writing by the parties from time to time;

"Fees" means the fees payable by the Client to Transition pursuant to this Agreement;

"Intellectual Property" means patents, trade marks and service marks, rights in designs, trade or business names, copyrights (including, without limitation, computer software) and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world and Intellectual Property Rights shall have a corresponding meaning;

“Liabilities” means all losses costs claims demands damages awards liabilities and expenses and including where incurred all legal and other professional costs and charges;

“Person” means any person, firm, company, partnership (including a limited liability partnership) organisation or other legal entity;

“Services” means the provision by Transition to the Client of a Company during the Assignment and pursuant to this Agreement;

“Tasks” means the tasks, assignments and work required by the Client to be carried out by or assigned to a Company.

2 **Company**

Transition agrees to supply a Company to the Client on a temporary basis. Transition will supply a Company from such date as is agreed between Transition and the Client until the Assignment is terminated in accordance with the provisions below. The estimated duration of the Assignment is set out in Schedule 1.

3 **Client Obligations**

3.1 The Client shall be responsible for:

3.1.1 specifying fully and clearly the Tasks and/or its requirements from and in relation to a Company provided by Transition under this Agreement (including details of the work to be undertaken by that Company); and

3.1.2 **determining whether the Company so provided is suitable for the Client’s requirements.**

3.2 The Client agrees to provide a Company provided by Transition under this Agreement promptly with all instructions, requirements, job descriptions, reporting requirements, information, data, reports facilities **and other materials (“Information and Materials”)** that the relevant Company may reasonable require from time to time to facilitate the performance of the Tasks. The Client warrants (for the benefit of Transition and the relevant Company) that all such Information and Materials is/are accurate and complete and that the Client is entitled to provide them to the relevant Company for its use without recourse to any third party.

3.3 **If any Company is to perform any Tasks at the Client’s premises, the Client shall ensure that such Company is allowed access to such premises upon reasonable prior notice during normal business hours and shall take full responsibility for the safety and security of the relevant Company whilst at such premises.**

3.4 If the performance of the Tasks requires the use of any equipment belonging to the Client:

3.4.1 the Client shall ensure that the Company provided by Transition under this Agreement is given such access to the equipment as is reasonably necessary to facilitate the performance of the Services; and

3.4.2 **such equipment, whether used at the Client’s premises or elsewhere, shall function properly, be in good repair, satisfy all health and safety requirements and remain at the Client’s risk and Transition shall not assume any responsibility or liability for its safety or security.**

4 **Time Recording and Fees**

4.1 The Client understands that the Company provided by Transition under this Agreement is required to **submit a record of the days and/or hours spent in the provision of the services (“Time Records”)** to Transition on a fortnightly basis. Prior to submitting Time Records to Transition, the Company provided by Transition under this Agreement will submit them to the Client for approval. If the Client does not

raise any objections to the submitted Time Records directly with Transition within two working days of them being so submitted, Transition will be entitled to assume that they are approved by the Client and may form the basis of the payments to the relevant Company.

- 4.2 In consideration of the supply of a Company to the Client, the Client shall pay to Transition a fee in respect of each day (or part of each day) during which such Company is assigned to the Client, calculated on the basis of the Daily Rate.
- 4.3 The Client acknowledges that all Fees payable in accordance with this Agreement shall be invoiced by Transition to the Client fortnightly in arrears. The Client agrees to make full payment in respect of any Fees due and invoiced by electronic bank transfer in accordance with the payment terms detailed in the Schedule 1. The Client shall if required by Transition set up a direct debit arrangement to ensure that this obligation is met. The Client accepts that Client Invoices will be emailed by Transition to the finance department of the Client for immediate attention. If the Client does not pay the Client Invoice on its due date for payment the Client shall pay interest on the overdue amount from the date payment becomes due until payment at an annual rate of 4% above the prevailing base rate of the Bank of England and such interest will accrue on a compounded daily basis.
- 4.4 The Client will enter into separate arrangements, if appropriate, with the relevant Company in respect of any expenses incurred by the relevant Company provided by Transition under this Agreement and understands and accepts that Transition is not responsible for any such expenses.
- 4.5 The Client acknowledges and understands that any Company provided by Transition under this Agreement will not be paid by Transition until Transition has received payment in full of all fees payable by the Client in respect of the relevant period.
- 4.6 All amounts payable pursuant to this Agreement are exclusive of Value Added Tax which is due in addition and will be charged at the rate in force from time to time.
- 4.7 No sums will be due from the Client to Transition for providing the Services other than those set out in this Agreement or agreed in writing by Transition and the Client from time to time.

5 **Quality Control**

- 5.1 Transition shall use reasonable endeavours to ensure that any Company provided by Transition under this Agreement has suitable integrity, reliability skills and experience for the purposes required by the Client. The Client shall notify Transition in writing immediately of any concerns or issues that the Client may have concerning the ability skills and experience of any such Company or the performance of the Tasks by that Company and Transition agrees to use its reasonable endeavours to correct any agreed shortcomings in relation to such performance. Transition shall not be responsible for the actions of any Company.
- 5.2 **This Agreement sets out the full extent of Transition's obligations and liabilities** in respect of the Services. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Transition except as specifically stated in this Agreement. Any condition, warranty, representation or other term which might otherwise be implied into or incorporated in this Agreement is hereby excluded.

6 **Engagement Fee**

- 6.1 The Client shall not for the duration of the Assignment and for a period of one year after termination of the Assignment (the "**Period**") **except pursuant to Clause 6.2 solicit or seek or endeavour to employ, engage or entice away any Company provided by Transition under this Agreement or any substitute thereof.**
- 6.2 If Transition agrees in writing, that the Client may engage a Company during the Assignment or at any time after its termination whether as an employee, partner, director or consultant providing services under a contract for services, the Client shall, at the direction of Transition and as a condition of such

consent, pay to Transition, a cash fee equivalent to 25% of the annual agreed remuneration (salary plus bonus) which will be payable to that Company during the first year of its engagement with the Client (the "**Engagement Fee**").

6.3 The Engagement Fee must be paid by the Client to Transition prior to engaging the relevant Company, whether as an employee, partner, director or consultant providing services under a contract for services.

6.4 If the Client does not pay the Engagement Fee when it falls due, the Client shall pay interest on the overdue amount from the date payment becomes due until payment at an annual rate of 4% above the prevailing base rate of the Bank of England and such interest will accrue on a compounded daily basis.

7 **Termination**

7.1 Either party may terminate the Assignment by giving the other party not less than 1 weeks notice during the first month of the Assignment and 4 weeks thereafter.

7.2 Each party shall have the right, without prejudice to its other rights or remedies, to terminate the Assignment with immediate **effect by written notice to the other party (the "Defaulting Party")** if the Defaulting Party:

7.2.1 is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy or the other party shall have failed to remedy such breach within 7 days after receiving written notice requiring it to remedy that breach. For the purposes of this sub-clause, non-payment of the Fees owed to Transition by the Client in accordance with clause 4 of this Agreement shall be deemed a material breach of the Agreement and incapable of remedy; or

7.2.2 is unable or admits its inability to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the liquidation, administration, winding-up or dissolution of the Defaulting Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over all or any substantial part of the assets of the Defaulting Party or the Defaulting Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing shall occur in any applicable jurisdiction.

7.3 The termination of the Assignment, (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after the date of termination.

8 **Consequences of Termination**

Upon termination or expiry of the Assignment at any time and for any reason each of the parties shall promptly thereafter deliver up to the other party all information and property of the other, including any Confidential Information in its possession, custody or control in such format and on such medium as the other party may reasonably require and shall confirm in writing that it has complied with this Clause.

9 **Liability**

9.1 Whilst all reasonable efforts are made to ensure the suitability of the Company, Transition does not warrant the integrity, fidelity, capability or qualifications of the Company. The Client acknowledges that it will have the opportunity to interview the Company and any of its staff provided to carry out the Tasks and to verify and satisfy itself of the experience, integrity, fidelity, capability, qualifications and references of the Company. Transition shall have no liability for any loss (including, without limitation, of an indirect or consequential nature), expense, damage, costs (including legal fees) or delay of whatever nature arising (whether directly or indirectly) from any:-

- 9.1.1 acts or defaults of whatever nature of the Company,
 - 9.1.2 failure on the part of Transition to provide a Company for completion of the Assignment,
 - 9.1.3 negligence, dishonesty, misconduct or lack of skill of the Company
 - 9.1.4 termination of the Assignment by the Company for any reason, or
 - 9.1.5 claim or complaint made by the Company or any of its staff against the Client under the Agency Workers Regulations 2010
- 9.2 The Client shall indemnify and keep indemnified Transition against all Liabilities suffered or incurred by Transition as a result of any claim against it arising directly or indirectly out of the provision of the services to the Client.
- 9.3 The Client shall, during the term of this Agreement, fully comply with any obligations to which it is subject regulating the processing, storage or transmission of personal data, including any obligations under the Data Protection Act 1998 and take all reasonable steps to protect the security of such data
- 9.4 **Nothing in this Agreement shall exclude or in any way limit Transition's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that such liability may not be excluded or limited as a matter of law.**
- 10 **Confidentiality**
- 10.1 During the Assignment and after its termination Transition shall not unless required to do so by law or by any Court or tribunal of competent jurisdiction:
- 10.1.1 **use any of the Client's trade secrets or Confidential Information for any purposes other than the Client's; or**
 - 10.1.2 **disclose any of the Client's trade secrets or Confidential Information to any person.**
- 10.2 Transition shall so far as it is reasonably able to do so use reasonable endeavours to ensure that any **Company provided by Transition under this Agreement keeps the Client's trade secrets and Confidential Information** which Transition or the relevant Company obtains or otherwise receives in connection with the Assignment safely and effectively protected against improper disclosure or use.
- 10.3 Transition shall request a relevant Company to enter into a direct agreement with the Client concerning confidentiality (mirroring the obligations above) if required by the Client.
- 10.4 **"Confidential Information"** shall include details of the Client's or any Associated Company's actual or potential customers or clients, details of relationships or arrangements with or knowledge of the **requirements of the Client's or any Associated Company's actual or potential customers or clients, details of the Client's or any Associated Company's business methods, finances, prices or pricing strategy, marketing or development plans or strategies, details of any tenders, pitches or presentations proposed or made, personal information about any of the Client's directors or employees, information** divulged to the Client or any Associated Company by a third party in confidence and any information relating to the Client or any Associated Company or any of its or their clients or customers which the Client or Associated Company or the client or customer in question reasonably considers to be confidential.
- 10.5 Transition shall use its reasonable endeavours so far as it is within its power and control to ensure that any Company provided by Transition under this Agreement shall, whenever requested by the Client and in any event on the termination of the Assignment, deliver to the Client all papers, documents, notes, records, memoranda, computer software programmes, operating manuals and maintenance manuals (including copies thereof) which may have been prepared by that Company or have come into its possession in the course of the Assignment.

10.6 The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of the Assignment.

11 **Intellectual Property**

Transition shall use reasonable endeavours so far as it is within its power and control to ensure that all records, documents, papers (including copies and summaries thereof) and other copyright protected works shall remain the exclusive property of the Client.

12 **Status**

The relationship of the parties is that of independent contractors **dealing at arm's length**. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint ventures or co-owners, or constitute either party as the agent or Company of the other party, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other party, and neither party shall hold itself out as having authority to do the same. For the avoidance of doubt Transition and the client agree that the Agency Worker Regulations 2010 do not apply to any director, officer, employee or representative of the Company.

13 **Contracts (Rights of Third Parties) Act 1999**

Other than as expressly stated herein, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

14 **Miscellaneous**

14.1 Nothing in this Agreement shall constitute or create or be deemed to constitute or create a partnership or the relationship or principal and agent or of employer and employee between Transition, the Client and/or any Company.

14.2 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

14.3 Transition may assign this Agreement in whole or in part to any third party without recourse to the Client. The Client shall not assign or otherwise transfer in whole or in part any of its rights, nor sub-contract any of its obligations, under this Agreement without the prior written consent of Transition.

14.4 This Agreement including the attached Schedule, the terms of which supersede any conflicting terms in the body of this Agreement, contains the whole Agreement between the parties relating to the Assignment and supersedes all previous agreements between the parties relating to the Assignment. Any amendment to or variation of the terms and conditions of this Agreement will not be effective unless confirmed in writing and signed by both parties.

Signed on behalf of Transition

Signed _____

Name (Print) _____

Dated _____

Signed on behalf of the Client

Signed _____

Name (Print) _____

Dated _____

SCHEDULE 1

NAME OF DIRECTOR, OFFICER, EMPLOYEE OR REPRESENTATIVE OF THE COMPANY NOMINATED BY THE COMPANY TO CARRY OUT THE TASKS:

ASSIGNMENT SUMMARY:

ASSIGNMENT ESTIMATED DURATION

ASSIGNMENT LOCATION:

DAILY RATE: £(plus VAT)

PAYMENT TERMS (nb standard payment terms are 14 days from date of invoice)

[Insert any further exclusions from or additions to the contract]