



Insight Executive Group Ltd

Contingent Search  
Terms and Conditions of Business

## Insight Executive Group Ltd Terms and Conditions of Business

### SECTION 1 – APPLICABILITY OF TERMS AND CONDITIONS

These terms of business form the agreement (“Agreement”) upon which Insight Executive Group Ltd (Company) introduces Candidates to the Client. This Agreement is expressly limited to these Terms and Conditions. The terms of this Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Client’s general terms and conditions contained in any other document issued by Client, irrespective of Company’s acceptance of payment, performance hereunder, or receipt or acknowledgement of receipt of any such terms or conditions. In the event of any conflict between the terms of this Agreement and the terms of any other document issued by Client, the terms of this Agreement shall prevail.

The Client’s signature of these terms of business by counterpart or otherwise, constitutes its acceptance of these terms of business. Whether or not the Client has signed these terms of business, the Client shall also be deemed to have accepted these terms of business upon the first to occur of:

- (i) the Client’s verbal or written request for or acceptance of details of Candidates; or
- (ii) the Client’s acceptance from Company of any recruitment services; or
- (iii) the Client’s verbal or written instruction to Company or consent to commence a recruitment assignment or provide Candidate details for a vacancy; or
- (iv) the Client’s verbal or written agreement to interview or engage in any capacity any Candidate who is introduced to the Client by Company.

### SECTION 2 - INTERPRETATION

**A. Definitions.** In these Terms and Conditions, the following definitions apply:

**Affiliate:** Any company that is related to Client by either Client or the company owning shares of the other, by common ownership, by common directorship or governance or by any other means of control.

**Appoint:** The acceptance, whether or not in writing, by the Candidate of an offer of a position by Client. The terms Appointed or Appointment shall be construed accordingly.

**Assignment:** a request by the Client to the Company to provide Recruitment Services in respect of a particular role(s) or vacancy/vacancies;

**Candidate:** An individual worker, or, where the worker is a company or other legal entity including the individual worker, as the case may be, including any of Company’s own employees, workers or agency staff.

**Client:** The person or firm signing these Terms and Conditions or to whom the Offer Letter, if any, or similar correspondence is addressed, including any affiliate or any other party acting at Client’s instruction or on their behalf.

**Contract:** These Terms and Conditions.

**Commencement Date of Assignment (“Commencement Date”):** means, with respect to each Assignment, the earlier of the date upon which (i) Company acknowledges in writing its acceptance; (ii) Company introduces a Candidate in connection with the Assignment; (iii) the Client or a 3<sup>rd</sup> party acting on Client’s behalf, interviews a candidate in respect of an Assignment; (iv) the Client Engages a Candidate in any capacity

in relation to the Assignment; or (v) a Candidate begins work for the Client in any capacity in relation the Assignment; or (vi) Company provides any of the Recruitment Services to the Client in connection with the Assignment.

**Contract:** These Terms and Conditions.

**“Engagement”:** The engagement, employment, hire or use of a Candidate by Client, by Client Affiliate or by any third party to whom or to which Candidate was introduced by Client (whether with or without Company’s knowledge or consent) on a permanent or temporary basis, whether under a contract of service or for services; under an agency, license, franchise or partnership agreement; or through any other engagement directly or through a company of which Candidate is an officer or employee; or indirectly through another employment business or company which holds itself out as such; and, “Engages” and “Engaged” will be construed accordingly;

**Introduce:** The provision to Client of information by Company by way of curriculum vitae, Shortlist or in such format as Client may from time to time require which identifies the Candidate. The terms Introduction and Introduced shall be construed accordingly. The introduction of the Candidate shall be deemed to have taken place notwithstanding that the Candidate may eventually take an Appointment with the Client in other than the Position in contemplation of the parties at the time of Introduction.

**Offer Letter:** The written offer, if any, to Client to carry out a Search upon these Terms and Conditions.

**Position:** The position Client seeks to fill, based upon Requirements detailed in Section 4 of these Terms and Conditions

**Requirements:** The requirements provided to Company by the Client based on Section 3 of these Terms and Conditions.

**Search:** A search by Company for Candidates to fill a particular Position (the Assignment)

**Shortlist:** A written list of Candidates Company has and/or intends to Introduce to Client.

**Terms and Conditions:** These terms and conditions as amended from time to time in accordance with section 8A.

**Territory:** The United States of America

**Total First Year’s Remuneration:** Means all emoluments (whether in form of wages, fees or otherwise) payable to or receivable by the Candidate, together with all bonuses (whether guaranteed or anticipated), commission payments, allowances, inducement payments, and any other benefits (whether taxable or non-taxable), including, where a car or car allowance is provided, the sum of \$10,000 or the car allowance, whichever is the greater.

The heading names in these Terms and Conditions are provided for reference purposes only and shall not be independently interpreted.

These Terms and Conditions shall be binding upon both parties based upon their respective conduct, notwithstanding any error or defect in the execution of these Terms and Conditions or other document.

### SECTION 3 - PROFESSIONAL SERVICES

#### A. Warranties.

(i) **Mutual Representations and Warranties.** Both Parties warrant that they have the necessary power and approval to enter into the Agreement and that entry into this Agreement will not cause it to violate any duties, obligations or representations it has made to third parties. Both Parties warrant that they are not aware of anything in their reasonable control which will or could have an adverse effect upon their ability to perform their respective obligations under the Agreement. Both Parties warrant that they will not do anything to hinder or adversely affect the execution of the other Parties' duties under the Agreement. The parties will cooperate in all matters relating to these terms and conditions so as to effect the intention of this Agreement. Client will designate one person as the primary Client contact for Company and will notify the Company in the event that such designation changes. Neither Party is aware that an engagement of a candidate pursuant to this Agreement will cause any detriment to Client, the Candidate or Company.

(ii) **Company Representations and Warranties.** Company shall perform the Search in good faith consistent with executive search industry standards. Company will use reasonable efforts to Introduce to the Client a suitable Candidate for the vacancy which the Client seeks to fill. Company cannot and does not warrant or guarantee to find a suitable Candidate for each or any vacancy. Company acknowledges that it does not have the right to bind the Client to obligations to third parties, including any Candidate..

(iii) **Client Representations and Warranties.** By accepting these terms, Client requests the Company to carry out an act on its behalf, and authorises the Company to act on the Client's behalf for that purpose. By requesting the Company to Introduce Candidates for a position, the Client authorises the Company to advertise that position. Client will immediately notify Company should these representations prove inaccurate or if circumstances change so as to make the representations inaccurate in any material respect. Client shall make no loan of money to any Candidate as respects the Introduction of Engagement process without first obtaining Company's written consent as to all loan details. Client accepts that the Company is not liable (and agrees to indemnify and hold harmless IAC) for any losses arising out of (i) any deception, misrepresentation, fraud or fraudulent statement by the Candidate howsoever made and whether by act, conduct or omission; (ii) any loss howsoever arising caused by the Candidate acting under employment to Client including losses due to negligence or gross-misconduct; and, (iii) any loss caused by the Candidate failing to take up employment as agreed.

(iv) **NO FURTHER WARRANTIES.** EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS AND CONDITIONS, COMPANY MAKES NO WARRANTY OF ANY KIND AND ALL OTHER CONDITIONS, WARRANTIES OR OTHER STATEMENTS WHATSOEVER WHETHER EXPRESS OR IMPLIED BY STATUTE OR COMMON LAW OR OTHERWISE HOWSOEVER, WRITTEN OR ORAL ARE HEREBY DISCLAIMED AND EXCLUDED.

**B. Client Provision Of Information to Company:** So as to enable Company to locate and Introduce suitable Candidates, Client will promptly provide the following information to Company for each and every Assignment:

(i) An executive summary of the Client including its areas of operations, samples of their work, etc.; (ii) A detailed description of the Position detailing the type of work to be done; (iii) a detailed description of the desired applicant, including the experience, training, any qualifications, authorisations, skill or level of care required of the potential candidate, which the Client reasonably considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position ; (iv) a copy of your Human resources policy, if any; (v) a sample employment contract detailing the terms on which the Candidate would be engaged, including the location and hours of work, of the date the Client requires the Candidate to commence work, the duration or likely duration of the work, the minimum rate of remuneration, expenses and any other benefits that would be offered, and the length of notice that the Candidate will be entitled to give and receive to terminate the employment with the Client; (vi) any health or safety risks associated with the Assignment and what steps the Client has taken to prevent or control such risks; (vii) whether the Candidate will be performing services for any people who are infirm, vulnerable, disabled, under 18 years of age or otherwise require skilled care; and, (viii) anticipated Total First Year's Remuneration .

**C. Company Provision of Information to Client:** With the introduction of any candidate, Company will provide (i) evidence of the Candidate's consent to share his/her personal and professional information with Client; (ii) at Client's request, any relevant qualifications or authorisations; (iii) any non-confidential references in Company's possession which are permitted to be disclosed; (iv) any confirmations Company has received as regards the matters set forth in Section 3.B. Company shall make reasonable efforts where reasonably practicable to ensure that the Client and Candidate are aware of any requirements imposed by law or any professional body to enable the Candidate to work in the position which the Client seeks to fill.

**D. Date of Introduction:** In the absence of evidence of earlier submission, the Company will be deemed to have submitted details of a Candidate to a Client for the purpose of an Introduction at the earliest of: (i) if communicated orally, when the communication is received by the Client or in the case of a message left by telephone, at the time the Client listens to the telephone message; (ii) if delivered personally in writing, when the relevant communication is left at the address of the Client; (iii) if sent by first class post, two business days after posting it; and (iv) if delivered by email to the email address notified by the Client to the Company from time to time, at the time of delivery of the email.

**E Notice Of Appointment:** Client will notify Company immediately an offer of an Appointment that has been accepted by a Candidate (whether orally or in writing) or otherwise upon the commencement of an Appointment (whichever first occurs).

**F. Separate Assignments; No Set-off.** Each Assignment shall be separate from any other Assignment, shall commence on the applicable Commencement Date and shall be subject to its own Introduction Fee. The Company may refuse/delay acceptance of a new Assignment if any fees for previous or ongoing Assignments are outstanding. Client may not withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Company whether relating to Company's alleged or actual breach or non-performance of this Agreement or any related agreement or work order.

**G. Advertising/Charges.** Any charges for advertising the Assignment, and all other charges, must be agreed separately in writing before the advertisement is placed and will be payable by the Client irrespective of whether a Candidate is Engaged.

**H. Candidate Suitability.** While Client shall use reasonable efforts to locate and introduce to Client suitable candidates, it shall nevertheless be the sole and exclusive obligation of Client, before engaging a Candidate, to satisfy itself as to the suitability of any Candidate introduced by Company, including but not limited to matters relating to or arising out of Candidate qualifications, authorisations, skills, character, experience, legal

entitlement to work, certifications and physical capacity and health. Client is solely responsible for obtaining work permits and/or such other permission to work and confirming and satisfying any other regulatory or legal requirements or restrictions. Client is responsible for determining and making arrangements for any medical examinations and/or investigations into the medical history of any Candidate and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Candidate is engaged to work.

**I. Notice of Appointment:** Client will notify Company immediately in writing when an offer of an Appointment has been accepted by a Candidate and in no event later than upon the commencement of an Appointment.

**J. Confidentiality of Introduction.** All information whether written or verbal, provided by Company to Client concerning a Candidate introduced to Client is confidential information and shall be treated as such in accordance with Section 7 of these Terms and Conditions. In the event that Client violates this confidentiality by passing, or causing to pass, such information concerning the Candidate to any other party, and where such third party thereafter engages the Candidate within 1 (one) year of the Introduction, the Client shall thereby become liable for the Fee set out in Section 4A, without refund, regardless the capacity, nature or attendant contract of any such engagement.

#### SECTION 4 – FEES

**A. Fee.** Company's standard Introduction Fee is applicable to each Assignment. The Introduction Fee is calculated by applying 30% to the Appointed Candidate's Total First Year's Remuneration. Where an Assignment relates to more than one role or vacancy, then the Introduction Fee in respect of such Assignment shall consist of the Introduction Fee in respect of each of the roles or vacancies which are the subject of such Assignment, and any reference herein to an Introduction Fee shall be construed accordingly.

- (i) If the Candidate is appointed in any capacity (whether as an employee, agent, consultant, contractor, or otherwise) or on any terms whereby no guaranteed annual income can be determined, then in such circumstances Company, in its sole discretion, shall fix an Introduction Fee so as the Introduction Fee shall be the applicable percentage determined in accordance with Section 4.A of the anticipated Total First Year's Remuneration, as indicated in Paragraph Client's information provided pursuant to 4C(viii) or the Candidate's previous gross annual remuneration if the Candidate is leaving the employment or has left their employment or engagement of another firm, company or person to commence the Appointment, whichever is greater.

**B. Candidate Abandonment/Rebate.** If, for reasons other than redundancy, threatened redundancy, Client failure to pay wages when due, or other reasons attributable to Client acts or omissions, the successful candidate either does not appear or start work or leaves the company within twelve (12) weeks of commencing employment, and further provided that (i) the Client informs the Company in writing of the termination of or failure to commence (Notice of Abandonment) employment within 5 business days of such termination (or failure to commence), and (ii) the Client has paid all sums due under the Assignment as of that date, then Company will attempt to find and Introduce another suitable Candidate within 2 months of the Notice of Abandonment at no additional cost to the Client. If a suitable replacement Candidate has not been introduced to Client within such 2 month period, then the Client will be repaid a percentage of the Success Fee based on the time passed between candidate start date and candidate abandonment date in accordance with the following rebate structure:

(i)	0 – 2 weeks	-	100% of Introduction Fee
(ii)	2 – 5 weeks	-	75% of Introduction Fee
(iii)	5 – 8 weeks	-	50% of Introduction Fee
(iv)	8 – 12 weeks	-	25% of Introduction Fee
(v)	12 weeks +	-	0% of Introduction fee

No rebate will be provided where, at the time of the introduction, the Candidates was an employee of the Client or where Client has failed to make payment due to Company or is otherwise in breach of this Agreement.

**C. Client Abandonment.**

- a. Where, after an Introduction, Client (i) withdraws, declines to fill or delays unnecessarily or materially changes the nature of the vacancy (including the type of work involved, its location, the hours of work, the commencement date and the likely duration) or the experience, training, qualifications and any authorisations (including any qualifications or authorisations required by law or any applicable professional body) it requires of a Candidate; or (ii) if, after an offer of employment has been accepted by a Candidate, the Client withdraws the offer, then Client shall be liable for a cancellation fee equal to 50% of the Introduction Fee.

**D. Non-Assignment Introduction Fee.** Where Company introduces or causes the introduction of a Candidate to Client other than pursuant to an Assignment and Client appoints such an individual, an Introduction Fee in accordance with Paragraph 5A shall be payable by Client to Company. For the avoidance of doubt, this Paragraph shall apply to any offer of and subsequent engagement by Client of an employee of Company.

**E. Expenses.** If Company incurs expenses relating to an Appointment or a proposed Appointment, whether agreed verbally or in writing with the Client, then such expenses shall be invoiced in addition to the Fee and shall be payable by the Client within 7 days of invoice date. All expenses shall be payable by the Client irrespective of whether the Client Engages any Candidate. Company will ensure that permission is sought from the client before such costs are incurred. The client will not be liable for costs incurred where prior permission was not received.

**F. Unnotified Hires.** In the event that Client Appoints, during or within 12 months after the expiry or termination of the Contract or within 12 months after an Introduction, a Candidate Introduced to Client by Company to the Position or a position other than the Position, Client shall immediately pay to Company the full Success Fee in accordance with Paragraph 4B.

**G. Application Via Another Agent And Direct Application:** Company’s fees are still payable notwithstanding: (1) the subsequent introduction of the Candidate to the Client by another agent; (2) the subsequent application of the Candidate to Client directly; (3) Candidate has accepted an Appointment with Client after having rejected a prior offer of Appointment by Client; or (4) after Client having declined to make an offer of Appointment to Candidate, Candidate is provided an Appointment with Client. Client therefore undertakes to inform Company within seven (7) days of learning the Candidate’s name if that Candidate had already been introduced directly or by another agent within the prior twelve (12) months. Failure to comply with this requirement shall constitute a waiver of rights under this clause by Client.

**H. Introduction to Third Parties.** If the Client effects an Introduction of any Candidate originally introduced to it by Company to any third party which results in the Engagement of the Candidate by that third party within 12 months of the date of the first Introduction or date of the last meeting between the Client and the Candidate pursuant to that Introduction, whichever is the later, of the Candidate by Company then the Introduction Fee shall be payable by the Client as if the Engagement had been within the terms hereof.

**I. Invoices.** Client shall pay the invoice submitted by Company in full and cleared funds within fourteen (14) days from receipt of the invoice, referencing both the relevant reference and invoice numbers. Company may, at its option, suspend its performance under the Contract and any or all Assignments until payment is received from Client on past due invoices or terminate the Contract. Any sales or similar taxes applicable to the services provided by Company under the Contract shall be added to Company's invoices and shall be paid by Client. In the event of late payment by the Client, Company reserves the right to charge interest on all overdue invoices at the rate of 1.5% per month of the full amount owing, including pre-judgement interest. In any action to obtain payment, Company shall be entitled to all fees, costs and expenses of such actions, including reasonable attorney's fees.

(i) The Client will, if it operates a purchase order system, promptly provide the Company with a valid purchase order reference following any agreement to Engage or make use of a Candidate.

(ii) If the Client does not provide or delays in providing a valid purchase order reference then the Client will indemnify the Company against all administrative, legal and other professional costs incurred by the Company as a result of such delay or failure. For the avoidance of doubt, any failure by the Client to promptly provide a valid purchase order reference to the Company shall not affect the Client's liability to pay any sums due under this Agreement or otherwise.

## SECTION 5 – TERMINATION

Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on immediate written notice to the other Party ("Other Party"), as the case may be, as follows:

**A.** If the Other Party is in material breach of its obligations under this Agreement and, the Other party has been notified by a writing specifying the breach and the Other party has failed to cure the breach within 10 (ten) working days of such notice; or

**B.** If the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or

**C.** For any reason on 14 (fourteen) days' written notice.

**D.** In the event that the Agreement is terminated in accordance with clause 6A or 6B then subject to the provisions of clauses 6G and 6H, each Assignment shall be terminated as at the date of termination of the Agreement.



**E.** In the event that the Agreement is terminated in accordance with clause 6C then subject to the provisions of clause 6F, 6G and 6H, and unless agreed otherwise, the Company will continue to fulfil all ongoing Assignments.

**F.** On termination of this Agreement, the Client will pay for all Recruitment Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Company for the performance of the Recruitment Services prior to the date of termination. For the avoidance of doubt, on termination of this Agreement the Client shall immediately pay all Introduction Fees in respect of the Introduction of Candidates who have agreed to be Engaged but who have not yet commenced their Engagement.

**G.** For the avoidance of doubt, the termination of this Agreement, howsoever arising, shall not affect the operation of Section 4 (including, but not limited to Paragraph 4F) or the validity of any invoice issued pursuant to such clauses.

**H.** Any notice served in accordance with this clause 8 will take effect as specified in the notice.

**I. Consequences of Termination.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after its termination shall remain in full force and effect. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

**J. Duration.** In all events, unless otherwise agreed by the parties, this contract shall terminate upon the expiration of 365 days from its acceptance by Client.

## **SECTION 6 - TERMINATION OF CANDIDATE**

**A. TERMINATION OF APPOINTMENT.** If the Appointment of a Candidate to the Position is terminated for cause or terminates as a result of the Candidate's resignation, other than due to death, disability, change in the Position responsibilities, compensation or any other change that is internal to Client, within four months from the date of such Appointment, Company will conduct a Search to find a replacement for the Candidate charging only for expenses .

**B. WITHDRAWAL OF APPOINTMENT.** If an offer of Appointment has been made to a Candidate either orally or in writing and is subsequently withdrawn after acceptance through no fault of the Candidate, the Client shall be liable to pay the Fee within the terms hereof regardless of whether or not any engagement has followed the Appointment.

## **SECTION 7 - CONFIDENTIALITY & DATA PROTECTION COMPLIANCE**

**A. Confidentiality.** Client shall keep in strict confidence any information which is identified as confidential or which is confidential by its nature and has been disclosed to Client by Company, its employees, agents or subcontractors and any other confidential information concerning Company's business, its products and services which Client may obtain. Client shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know it for the purpose of discharging Client's obligations under the Contract, and Client shall ensure that such employees, agents and subcontractors comply with the

obligations set out in this section 8A as though they were a party to the Contract. Client may also disclose such of Company's confidential information as is required to be disclosed by law, any government or regulatory authority or by a court of competent jurisdiction. Client shall not use Company's confidential information for any purpose other than to perform its obligations under this Contract. This section 6A shall survive termination of the Contract.

**B. Return of Materials.** Client shall on demand and on termination of the Contract surrender to Company all materials relating to Company's confidential information in its or its employees', agents' or subcontractors' possession.

**C. Data Protection Compliance.** (i) Client will process personal data and information provided to it by Company only in accordance with Company's instructions; (ii) Client will not transmit such data or information to a country or territory outside the USA without Company's prior express written consent; and (iii) Client will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate. Each Party commits to comply with all applicable privacy and data protection laws.

## SECTION 8 – LIABILITY

A. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), REGARDLESS OF WHETHER SUCH DAMAGES WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR SUCH DAMAGES.

B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO COMPANY PURSUANT AND IN RELATION TO THE SPECIFIC ASSIGNMENT AND INTRODUCTION GIVING RISE TO THE ALLEGED LOSS.

C. COMPANY ACCEPTS NO LIABILITY TO THE CLIENT WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, MISTAKE, MISREPRESENTATION OR ANY OTHER ACT OR OMISSION ON THE PART OF COMPANY, ITS SERVANTS, AGENTS OR EMPLOYEES OR OTHERWISE HOWSOEVER FOR (1) ANY LOSS, DAMAGES OR EXPENSE ARISING DIRECTLY OR INDIRECTLY AS A CONSEQUENCE OF ANY ACT OR OMISSION (WHETHER NEGLIGENT, DISHONEST, FRAUDULENT OR OTHERWISE) OF ANY CANDIDATE DURING SUCH TIME AS HE OR SHE IS BEING CONSIDERED FOR ENGAGEMENT OR IS ENGAGED OR OTHERWISE UNDER THE CONTROL OR DIRECTION OF THE CLIENT AND IT SHALL BE EXPRESSLY AGREED AND UNDERSTOOD BETWEEN THE CLIENT AND COMPANY THAT: (i) ONLY THE CLIENT IS IN A POSITION TO ASSESS AND/OR INSURE AGAINST RISKS IN RESPECT OF OR DURING OR ARISING OUT OF THE PERIOD FOR WHICH ANY CANDIDATE IS ENGAGED BY THE CLIENT; AND, (ii) THE CHARGES MADE BY COMPANY REFLECT ONLY THE SERVICES SUPPLIED AND DO NOT INDICATE ACCEPTANCE OF ANY LIABILITY FOR CANDIDATES; (2) ANY LOSS, DAMAGES OR EXPENSE ARISING DIRECTLY OR INDIRECTLY AS A CONSEQUENT OF CANDIDATE NOT MEETING THE CLIENT'S REQUIREMENTS FOR ALL OR ANY PORTION OF THE PURPOSES FOR WHICH THE CANDIDATE IS REQUIRED BY CLIENT; AND (3) ) ANY LOSS, DAMAGES OR EXPENSE SUFFERED BY A CANDIDATE OR DIRECTLY OR INDIRECTLY.

D. This section 8 shall survive termination of the Contract.

## SECTION 9 - INDEMNIFICATION

The Client will indemnify and hold harmless the Company from and against all claims and losses arising from loss, damage, liability, injury to the Company, its employees and third parties, by reason of or arising out of:

- (i) any loss, injury, expense or delay suffered or incurred by a Candidate, however caused; and/or
- (ii) any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Candidate and/or the Client, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise,

that arise directly or indirectly out of or is in any way connected with the Introduction, Engagement or use of a Candidate, the withdrawal by the Client of a vacancy, any information supplied by the Client to the Company or the Client's breach of this Agreement. Claims refer to and mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, delict or otherwise), and Losses refer to and mean all losses including, without limitation, financial losses, damages, legal costs and other expenses of any nature whatsoever.

## SECTION 10 – MISCELLANEOUS

**A. Entire Agreement; Amendment.** The Contract constitutes the entire agreement between the parties. Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Company which is not set out in the Contract. No variation of the Contract shall be effective unless it is in writing and signed by Company.

**B. Governing Law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the State of New York, and Company and Client irrevocably agree that the courts of the State of New York shall have exclusive jurisdiction to settle any such dispute or claim. Notwithstanding the foregoing, both Parties agree that in the event of a dispute they will enter into arbitration under the rules of the American Arbitration Association for Commercial Arbitrations before a single arbitrator whose decision shall be final and enforceable in any court having jurisdiction.

**D. No Third Party Interest.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

**E. Assignment.** Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. A Party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

**F. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination

that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**G. Force Majeure.** Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

**H. Waiver.** The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

**I. Relationship.** This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**J. No Public Announcement.** No Party will issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

**K. Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy, email or by postage prepaid, registered, certified or express mail or by reputable overnight courier service. Notice shall be deemed given when delivered by hand; when sent by telecopy or facsimile, upon receipt of telecopy confirmation, three days after mailing (one (1) Business Day in the case of guaranteed overnight express mail or guaranteed overnight courier service), at the address for the entity receiving such notice, as indicated herein; and by email upon receipt of electronic confirmation of delivery. Any party hereto may change its address by providing written instructions to the other party, specifying the new address of such entity.

**L. Counterparts.** Without limiting in any manner the provisions of Paragraph 1 hereof, this Agreement and any amendments hereto may be executed by facsimile or email and in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

**M. Waiver of Jury Trial.** To the extent permitted by applicable law, each party hereto irrevocably waives all right of trial by jury in any action, proceeding or counterclaim based on, or arising out of, under or in connection with this Agreement, any other Transaction Document, or any matter arising hereunder or thereunder.

**N. Attorney Fees.** In the event of any suit, arbitration or action to enforce or interpret any provision of this Agreement (or that is based on this Agreement), the prevailing party is entitled to recover, in addition to other costs, reasonable attorney fees in connection with the suit, action, or arbitration, and in any appeals. The

determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party will be decided by the arbitrator, the court or courts, including any appellate courts, as the case may be, in which the matter is tried, heard, arbitrated or decided.

**O. Non-Solicitation.** During the Term of this Agreement and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement and who is then in the employment of the other party.

**N. Governing Law and Venue.** This Agreement is executed and intended to be performed in the State of \_\_\_\_\_ and the laws of the \_\_\_\_\_, without regard to conflict of laws principles, shall govern its construction, interpretation and effect. A suit, claim, or other action to enforce the terms of this Agreement shall be brought exclusively in the state courts of \_\_\_\_\_ County, \_\_\_\_\_. The parties hereby submit to the jurisdiction of such court and waive any objections either may have to that court asserting jurisdiction over the Parties or their assets and property.

Signed and Agreed to as Follows:

### Company

Signed for and on behalf of . Insight Executive Group Ltd: .....

Name ..... Date.....

Business Address: The Courtyard Shoreham Road, Upper Beeding, Steyning, West Sussex, BN44 3TN, United Kingdom

### The Client

We have read and agree to Company's terms and conditions of business:

Signed for and on behalf of.....

Name ..... Title..... Date.....

Registered office address/principal place of business .....

.....