



## **Terms and Conditions of Business ("Terms")**

These Terms and Conditions are governed by and interpreted in accordance with the laws of England and Wales.

### **1. Definitions & Interpretation**

In these Terms of Business (Terms) the following definitions apply:

<b>Agency</b>	Dysis Ltd (trading as “Kirtland Partners” or “Kirtland Search”) whose principal place of business is 70 Upper Richmond Road, London SW15 2RP, United Kingdom;
<b>Client</b>	means the person, firm or corporate body together with any company in its Group who approaches the Agency with a view to engaging or otherwise employing an individual or to whom a Candidate is introduced by the Agency;
<b>Candidate</b>	means any person Introduced by the Agency to the Client at any stage after the issue of these Terms for the purposes of being considered for an Engagement including any officer or employee of a Candidate if the Candidate is a limited company (or other legal entity) and members of the Agency’s own staff (such as but not limited to employees, workers or contractors);
<b>Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;  “Controller”, “Processor”, “Data Subject”, “personal data”, “personal data breach”, “processing” and “appropriate technical and organizational measures” have the meanings given to them in the Data Protection Legislation.
<b>Engagement</b>	means the engagement, employment, hire or other use directly or indirectly and whether under a



contract of service or contract for services or otherwise and on a permanent, temporary or other basis, of a Candidate by or on behalf of the Client and 'Engaged', 'Engaging' and 'Engages' will be interpreted accordingly;

**Group**

means in relation to a company, that company, each and any subsidiary or holding company from time to time, and each and any subsidiary from time to time of a holding company of that company;

**Introduction**

an Introduction is made and is effective on the date that the Client receives notification (written or electronic) of the Candidate from or through the Agency that has been confirmed received by the Client in writing. Such Introduction will remain valid for a period of 12 months from the date that it is effected;

**Remuneration**

an amount equal to the first twelve months anticipated cash compensation including salary and any guaranteed, target or sign-on bonus, and excluding any non cash compensation such as carry or equity based compensation.

Unless the context requires otherwise, references to the singular include the plural.

Unless specifically provided to the contrary, when a time period is prescribed in or under these Terms, such time period shall be calculated to start on the day on which such obligation arises or event occurs.

**2. The Contract**

2.1 These Terms constitute the contract between the Agency and the Client and are deemed to be accepted by the Client by virtue of an Introduction to, or the Engagement of a Candidate or the passing of any information about a Candidate by the Client to any third party following an Introduction.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a Director of the Agency, these Terms shall prevail over any other terms of business or purchase conditions put forward by the Client.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Agency and the Client and are set out in writing.



2.4 If any provision or part-provision of the Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Terms.

### **3. Obligations of the Agency**

3.1 The Agency will endeavor to introduce to the Client a suitable Candidate to carry out work for the Client of such nature as the Client will notify to the Agency when advising the Agency of the position in respect of which a Candidate has been Introduced. The Agency agrees not to discriminate among candidates on the basis of race, creed, religion, national origin, gender, sexual orientation or any other protected classification.

3.2 If a Candidate is required by law, or any professional body to have any qualifications or authorizations to work in the position which the Client seeks to fill; or the work involves caring for or attending one or more persons under the age of eighteen, or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Agency will use reasonable endeavors to obtain, and provide to the Client, copies of any relevant qualifications or authorizations of the Candidate two references from persons not related to the Candidate (provided such persons have consented to references they have provided being disclosed to the Client). If the Agency is unable to do any of the above, it shall inform the Client of the steps it has taken to obtain this information.

3.3 The Client accepts that no warranty as to the suitability of a Candidate can be given by the Agency and that the Agency cannot guarantee to find a suitable Candidate for each vacancy. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, for the arrangement of 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 a Candidate is engaged to work.

### **4. Obligations of the Client**

4.1 The Client shall provide to the Agency details of the position which the Client seeks to fill, including the type of work that a Candidate would be required to do; the location and hours of work; the experience, training, qualifications and any authorization which the Client considers necessary or which are required by law or any professional body for a Candidate to possess in order to work in the position; and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks. In addition, the Client shall provide details of the date the Client requires a Candidate to commence, the duration or likely duration of the work; the minimum rate of remuneration, expenses and any other benefits that would be offered; the intervals of payment of remuneration and the length of notice that a Candidate would be entitled to give and receive to terminate the employment with the Client.

4.2 The Client shall:



(a) notify the Agency immediately of any offer of an Engagement which it makes to a Candidate;

(b) notify the Agency immediately that its offer of an Engagement to a Candidate has been accepted or the Engagement has commenced (whichever first occurs) and provide details of the Remuneration to the Agency; and

(c) pay the Agency's Introduction Fee (defined below) in accordance with clause 5.

4.3 In order to protect the legitimate business interests of the Agency's Group, the Client covenants with the Agency for itself and as agent for its Group that it shall not (and shall procure that no member of the Client's Group shall not) (except with the prior written consent of the Agency) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person provided that nothing in the foregoing clause shall prevent such members of staff from contacting the Client in response to a publicly advertised role.

4.4 The Client shall be bound by the covenant set out in clause 4.3 during the period in which these Terms apply and for a period of 6 months thereafter.

4.5 For the purposes of clause 4.3, a Restricted Person shall mean any firm, company or person known by the Client to be employed or engaged by the Agency or any Group company to provide services under these Terms or the management of these Terms either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

4.6 If the Client commits any breach of clauses 4.3 to 4.5, the Client shall, on demand, pay to the Agency or relevant Group company a sum equal to the higher of either:

(a) 300% of the Introduction fee payable if the Restricted Person had been Introduced by the Agency in accordance with these Terms; or

(b) the revenue generated by the Restricted Person for the Agency in the previous 3 full calendar months prior to leaving the Agency.

4.7 The Client consents to the disclosure by the Agency to Candidates and potential Candidates of information relating to the Client.

## **5. Notification and Fees**

5.1 The fee payable to the Agency by the Client for an Introduction resulting in an Engagement (the Introduction Fee) will be invoiced on or around the commencement of an Engagement ("Commencement Date"). VAT will be payable on Introduction Fees at the prevailing rate if applicable.

5.2 The Introduction Fee payable to the Agency by the Client shall be calculated at 25% of the Remuneration applicable during the first 12 months of the Engagement.



5.3 The Introduction Fees due under these Terms will be paid by the Client within 14 calendar days of the Commencement Date.

5.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Agency any sum due under these Terms on the due date, the Agency reserves the right to charge interest on the overdue amount at the rate of 2% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

5.5 The Agency shall have the right to set-off any amounts which may become payable by it to the Client against any amounts that, in the Agency's reasonable assessment, the Client may owe to the Agency.

5.6 All sums payable to the Agency under these Terms:

(a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

(b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. Introductions**

6.1 Introductions of Candidates are confidential. The disclosure by the Client to a third party of any details regarding a Candidate Introduced by the Agency which results in an Engagement of a Candidate by that third party within 6 months of the Introduction renders the Client liable to payment of the Agency's Introduction Fee as set out in clause 5, if not paid by such third party, with no entitlement to any rebate.

6.2 An Introduction Fee calculated in accordance with clause 5 will be charged in relation to any Candidate Engaged by the Client as a consequence of or resulting from an Introduction by or through the Agency, whether direct or indirect, within 12 months from the date of the Introduction.

## **7. Termination & Refunds**

7.1 In the event of a Candidate terminating or the Client lawfully terminating an Engagement within 12 Weeks of the date upon which such Candidate commenced work for the Client and provided that:

(a) all moneys due under these Terms have been paid by the Client in accordance with clause 5 of these Terms;

(b) such termination is not as a result of redundancy, injury or ill health or is



discriminatory because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation;

(c) the Client has entered into the engagement in good faith and such termination has not arisen as a result of the Client entering into the Engagement with the prior or likely intention of disposing of a Candidate's services or terminating a Candidate's employment without proper cause or with a view to obtaining a refund otherwise than in good faith;

(d) where requested by the Agency, the Client can prove, to the Agency's satisfaction, that it has acted in accordance with the ACAS Code or any equivalent code or guidelines;

(e) the Client serves notice on the Agency in writing of the termination of the Engagement within 7 calendar days of the termination date; and

(f) neither the Client nor any company in its Group will commence Engagement of the Candidate within 6 months from the date of the termination;

the Client will receive a rebate in the amount of 25% of the Introduction Fee.

7.2 No rebate will be payable by the Agency in the event of failure by the Client to adhere to the time limits provided for in clause 7.1 above.

7.3 The rebate will be repayable in full where the Client subsequently re-Engages the Candidate in any capacity.

## **8. Search Projects**

From time to time the Client may instruct the Agency to undertake specific search projects (each an Executive Search Project). The terms applicable to any Executive Search Project will be set out in a schedule to these Terms (an Executive Search Project Schedule). The terms of an Executive Search Project Schedule shall prevail over reciprocal provisions in these Terms, only in relation to the relevant Executive Search Project. In all other circumstances the provisions of these Terms shall prevail.

## **9. Liability & Indemnity**

9.1 Neither the Agency nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with an Engagement and, in particular, but without limitation to the foregoing, any such loss, injury, damage, expense or delay arising from or in any way connected with:

(a) failure of a Candidate to meet the requirements of the Client for all or any of the purposes for which he is required by the Client;



(b) any act or omission of a Candidate, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and

(c) any loss, injury, damage, expense or delay incurred or suffered by a Candidate;

PROVIDED THAT nothing in this clause 9 will be construed as purporting to exclude or restrict liability of the Agency to the Client for personal injury or death resulting from negligence (as defined in the Unfair Contract Terms Act 1972) nor any statutory liability or any exclusion or limitation which is prohibited by law.

9.2 In consideration of the Agency entering into an agreement with the Client into which these Terms are incorporated, the Client undertakes to indemnify the Agency in respect of any and all liability of the Agency for:

(a) any loss, injury, expense or delay suffered or incurred by a Candidate, howsoever caused; and

(b) 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, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;

PROVIDED THAT this indemnity is given only in respect of any such loss, injury, damage, expense or delay caused during or arising directly or indirectly out of or in any way connected with an Engagement.

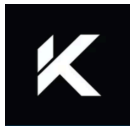
9.3 If the Agency is in breach of any obligations under these Terms or if any other liability is arising (including liability for negligence or breach of statutory duty) then, subject to clause 10.1, the Agency's aggregate liability to the Client under these Terms shall be limited, for any one event or series of connected events in any period of 12 consecutive months, to the payments made to the Agency by the Client in such 12 month period.

9.4 The Client acknowledges that the limitations and exclusions of the obligations and liabilities of the Agency set out in these Terms are reasonable and reflected in the fee payable to the Agency under these Terms and will accept risk or insure accordingly.

## **10. Data Protection**

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation to the extent applicable.

10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the controller and the Client is the processor. Schedule 1 sets out the scope, nature



and purpose of processing by the Client, the duration of the processing and the types of personal data and categories of Data Subject.

10.3 Without prejudice to the generality of clause 10.1, the Client shall, in relation to any personal data processed in connection with these Terms:

(a) process that personal data only on the documented written instructions of the Agency unless the Client is required by applicable laws to otherwise process that personal data. Where the Client is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the Client shall promptly notify the Agency of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Client from so notifying the Agency;

(b) ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures; and

(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential.

10.4 Where relevant, the Client shall not transfer any personal data outside of the European Economic Area unless the prior written consent of the Agency has been obtained and the following conditions are fulfilled:

(a) the Agency or the Client has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective legal remedies;

(c) the Client complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(d) the Client complies with reasonable instructions notified to it in advance by the Agency with respect to the processing of the personal data.

10.5 The Client shall:

(a) assist the Agency, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;



(b) notify the Agency without undue delay, and in any event within 48 hours, on becoming aware of a personal data breach;

(c) at the written direction of the Agency, delete or return personal data and copies thereof to the Agency on termination of these Terms unless required by Applicable Law to store the personal data; and

(d) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Agency or the Agency's designated auditor and immediately inform the Agency if, in the opinion of the Client, an instruction infringes the Data Protection Legislation.

10.6 The Agency does not consent to the Client appointing any third-party processor of Personal Data under these Terms.

10.7 The Client shall indemnify the Agency against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Agency arising out of or in connection with the breach of the Data Protection Legislation by the Client, its employees or agents.

## **11. Confidentiality**

11.1 The Client shall at all times during the continuance of these Terms and after their expiry or termination (howsoever caused):

(a) keep all information relating to the business or affairs of the Agency (Confidential Information) confidential and accordingly not disclose any Confidential Information to any third party; and

(b) not use any Confidential Information for any purpose other than the performance of its obligations under these Terms.

## **12. Miscellaneous**

12.1 Any failure by the Agency to enforce at any particular time any one or more of these Terms shall not be deemed a waiver of such rights or of the right to enforce these Terms subsequently.

12.2 No provision of these Terms shall be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999.

12.3 These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.



## **SCHEDULE 1**

### **DETAILS OF PROCESSING PERSONAL DATA**

This Schedule 1 includes certain details of the processing of Client personal data as required by Article 28(3) GDPR.

#### **Subject matter and duration of the processing**

- The subject matter and duration of the processing of the Client personal data are set out in these Terms.

#### **The nature and purpose of the processing**

- The Client will process personal data as necessary to receive the services under these Terms and as further instructed by the Client in its use of the services.

#### **The types of Candidate personal data to be processed**

- Contact details including a Data Subject's full name, email address, address, telephone number and any other personal identifiers.

#### **The categories of Data Subject to whom the personal data relates**

- The personal data processed concerns the Candidates and employees of the Agency.



**Acknowledgment and Acceptance**

I, the undersigned, hereby acknowledge and agree to the terms outlined above and confirm that I am authorized to enter into this agreement on behalf of

**[Company Name]**

Signature: \_\_\_\_\_ Date: [Date]

Name: [Person Name]

Title: [Person Job Title]

*And*

I, the undersigned, hereby acknowledge and agree to the terms outlined above and confirm that I am authorized to enter into this agreement on behalf of

**Kirtland Partners**

Signature: \_\_\_\_\_ Date: [Date]

Name: [Person Name]

Title: [Person Job Title]