

AKAY EXECUTIVE SEARCH

TERMS OF SERVICE

The Akay Executive Search LLC Terms of Agreement (the “Agreement”) is entered into by and between Akay Executive Search LLC, (“Recruiter”), a California limited liability company, with a registered address at 13700 Marina Pointe Drive, Unit 503 Marina del Rey, California 90292 (the “Recruiter”) and any person, firm, or company whom the Candidate is Introduced (the “Client”).

WHEREAS, the Recruiter is in the business of providing recruiting services to clients with staffing and other hiring needs; and

WHEREAS, the Client and the Recruiter desire to enter into this Agreement pursuant to which the Recruiter will introduce to the Client professional and skilled personnel candidates for potential engagement by the Client on a permanent or temporary basis to be engaged directly by the Client.

NOW, THEREFORE, in consideration of the above premises, the mutual promises and covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Recruiter and the Client hereby agree as follows:

1. DEFINITIONS

The following definitions and rules of interpretation apply in this Agreement:

“**Candidate**”: a person that is Introduced by the Recruiter to the Client for the purpose of filling a Vacancy.

“**Client**”: the party that has appointed the Recruiter to identify Candidates for a particular Vacancy.

“**Commencement Date**”: means the earlier of (i) the date of signature of this agreement; and (ii) the date of Introduction of a Candidate.

“**Contingency Search**”: recruitment services provided to the Client where payment of Commission is entirely dependent on the entry into a Relevant Contract.

“**Contract Year**”: means a 12-month period beginning on the Commencement Date and any anniversary of it.

“**Data Protection Laws**”: Means any state, federal or foreign laws or regulations that relate to privacy, security, data, protection and destruction, data breach notification or data transfer issues, including, without limitation, the General Data Protection Regulation (“GDPR”) (EU 2016/679), and all current and former privacy policies, guidelines and industry standards applicable to the Client’s business.

“**First Year Remuneration**”: the salary, bonus earned and other cash equivalent payable by the Client to the successful Candidate in respect of the first year of employment without deduction for any taxation.

"Introduction": the Recruiter providing a Candidate's contact details or resume/CV to the Client. **"Introduce"**, **"Introduces"**, and **"Introduced"** shall be interpreted accordingly.

"Introduction Date": for each Candidate, the date during the term of this Agreement on which the Recruiter first Introduces such Candidate to the Client.

"Introduction Period": for each Candidate, the period of 18 months from the Introduction Date, irrespective of whether such period ends before or after the date of termination of this agreement.

"Proposal": the recruitment project details notified by the Client to the Recruiter and agreed between the parties in writing.

"Relevant Contract": a contract of employment entered into during the Introduction Period between the Client and a Candidate who was Introduced by the Recruiter.

"Retained Search": recruitment services provided to the Client where payment of Commission is made following signature of this agreement and subsequently on the completion of certain milestones as detailed in clause 2.6.

"Vacancy": a current or speculative job opportunity.

2. OBLIGATIONS AND COMMISSIONS:

- 2.1. The Recruiter shall use reasonable endeavors to make Introductions of Candidates with the skills and experience required for the relevant Vacancy. The Recruiter shall report in writing to the Client from time to time on progress made with Candidates.
- 2.2. The Recruiter shall be entitled to Commission if a Candidate Introduced by the Recruiter enters into a Relevant Contract. The minimum amount of commission payable by the Client to the Recruiter in respect of a Relevant Contract shall be \$25,000. Commission is otherwise charged at the rate of 40% of the Candidate's total First Year Remuneration under the Relevant Contract (the **"Commission"**). For the avoidance of doubt, the First Year Remuneration shall not include the value of employee benefits such as stock options, insurance cover, pensions or other fringe benefits. The Commission shall be calculated on a pro-rata basis for Vacancies with duration of less than 12 months.
- 2.3. The Client shall promptly notify the Recruiter in writing of the date it enters into a Relevant Contract and the Commission due pursuant to the Relevant Contract.
- 2.4. In respect of a Contingency Search the Recruiter shall invoice the Client for the full amount of Commission payable on the date that the Recruiter receives notification that a Relevant Contract has been signed by the Candidate.
- 2.5. In respect of a Retained Search, the Recruiter shall invoice the Client for the Commission payable together with any applicable VAT in three installments: (i) one third upon signature of the parties of this agreement (which shall be non-refundable); (ii) one third on the date that the Recruiter provides a short list of suitable Candidates to the Client as agreed between the parties in writing (which shall be non-refundable); and (iii) one third on the date that the Recruiter receives notification that a Relevant Contract has been signed by the Candidate (subject to clause 2.8).
- 2.6. The due date for payment by the Client of such Commission shall be 21 days from the date of the relevant invoice. Commission shall be payable to the Recruiter in pounds sterling unless otherwise agreed in writing. All sums payable under this agreement are exclusive of taxation and shall be paid in full without any deductions. If the Client fails to make any payment due to the Recruiter under this agreement by the due date for payment then the Client shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. 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 and the overdue amount together with any

legal costs incurred by the Recruiter arising from such late payment.

- 2.7. If the Client employs more than one Candidate Introduced by the Recruiter during the course of a Proposal or if another applicant or applicants (in the case of a team of a Candidate's employees in whole or part) referred by a Candidate enter(s) into a contract of employment with the Client, the Recruiter shall be paid Commission in respect of each such employment contract entered into with a successful applicant. If the Client employs a Candidate within the Introduction Period then the Recruiter shall be paid Commission as set out in clause 3.3. Equally if the Client refers a Candidate to a third party whom subsequently enters into an employment contract with the Candidate then the Client shall pay Commission to the Recruiter as set out in clause 2.2.
- 2.8. The Recruiter shall comply with all reasonable and lawful instructions of the Client and in the event that a Relevant Contract is terminated within the first month of employment the Recruiter shall reimburse the Client for Commission paid as follows: (i) 100% if terminated within the first week; and (ii) 50% if terminated between the beginning of the second week and the end of the fourth week. No refund shall be paid if the Relevant Contract is terminated after the end of the fourth week

3. CLIENT RESPONSIBILITIES:

- 3.1. The Client shall provide the Recruiter with the information the Recruiter reasonably requires to perform its duties, including marketing information for and details of the Vacancy, and information about the Client. The Client shall inform the Recruiter immediately if the Client no longer intends to fill the Vacancy. The Client shall not be responsible for any expenses incurred by the Recruiter unless such expenses have been agreed by the Client in writing, in advance. The Client shall be under no obligation to follow up any Introduction made by the Recruiter (other than for the purpose of organizing an interview) or enter into a Relevant Contract. The Client is solely responsible for carrying out any pre-employment screening to verify a Candidate's suitability for a Vacancy including with respect to matters such as qualifications, criminal records, medical history or work permit requirements as applicable.
- 3.2. The Client shall keep separate accounts and records giving correct and adequate details of all Relevant Contracts entered into by the Client. The Client shall permit the Recruiter (or its representatives) at all reasonable times, but no more than once in any 12-month period to inspect any available records.

4. CONFIDENTIALITY AND DATA PROTECTION:

- 4.1. All information relating to a Candidate is confidential and subject to applicable Data Protection Laws and is provided solely for providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client always undertakes to abide by the provisions of all applicable Data Protection Laws in receiving and processing the data. In addition, information relating to the Recruiter's 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, and must be consented to by either Recruiter or Client.

5. EQUAL OPPORTUNITY:

- 5.1 Recruiter is an Equal Opportunity Employer. It shall be the policy of both Recruiter and Client to provide equal opportunity without regard to race, color, religion, sex, national origin, age, handicap or veteran status. Recruiter understands that Client does not discriminate in employment or hiring based on race, color, creed, sex, age, national origin, religion, handicap, sexual orientation, marital status, veteran status or any other basis prohibited by applicable law.

6. LIMITATION OF LIABILITY:

6.1. To the extent permitted by applicable law neither party shall under any circumstances be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential losses. The total liability of the Recruiter in a Contract Year in respect of all other loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Commission received from the Client in the Contract Year to which the claim relates. In no event shall the Recruiter be liable to the Client for any loss, damage, costs or expenses arising from an Introduction or subsequent entry into a Relevant Contract.

7. COMMENCEMENT AND DURATION:

7.1. This Agreement shall commence on the Commencement Date and shall continue, unless terminated by either party giving not less than 30 days' prior written notice or otherwise as in accordance with clause 8. In either case the Client shall pay to the Recruiter all Commission due through to the effective date of termination.

8. TERMINATION:

8.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so or if the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986. On termination of this agreement, clause 21 (Obligations and Commissions), clause 3 (Client Responsibilities) and clause 4 (Confidentiality and Data Protection) shall continue in force.

9. GENERAL:

9.1. **AGREEMENT TO ARBITRATE:** Any controversy, dispute or claim arising out of or relating to this Agreement or breach thereof, upon which an amicable understanding cannot be reached, shall be submitted to arbitration in Los Angeles, California before the American Arbitration Association ("AAA"). The arbitrator shall be selected by application of the rules of the AAA, or by agreement of the parties, except that such arbitrator shall be an attorney admitted to practice law in California. Nothing contained herein shall prevent the party from obtaining an injunction. The parties agree to be bound by the decision of the arbitrator(s).

9.2. **ATTORNEYS FEES:** In the event that either Recruiter or Client institutes any legal suit, action, or proceeding, including arbitration against the other to enforce the covenants contained in this Agreement, or obtain any other remedy in respect of any breach of this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses and court costs.

9.3. **WAIVER OF JURY TRIAL:** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

- 9.4. **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 terms, which shall continue to be valid to the fullest extent permitted by applicable laws.
- 9.5. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice or conflict of law provision or rule. Any claim or action brought by one of the parties in connection with this Agreement will be brought in the appropriate Federal or State court located in the County of California, and the parties irrevocably consent to the exclusive jurisdiction of such court.
- 9.6. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and unless otherwise agreed in writing by the Recruiter, this Agreement prevails over all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the terms of any other agreement or instrument relating to the subject matter hereof, the terms of this Agreement will control.
- 9.7. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronically by the parties or the parties' respective attorneys, will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronically will be deemed to be their original signatures for any purpose whatsoever.
- 9.8. **ASSIGNABILITY:** Neither Recruiter or Client may assign any of its rights or delegate its obligations hereunder without the prior written consent of the Recruiter or Client, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Recruiter or Client of any of its obligations hereunder. This Agreement shall be binding upon and shall inure to the benefit of both Recruiter and Client and their respective and permitted successors and permitted assigns.