

TERMS & CONDITIONS OF ENGAGEMENT

These Conditions and our Engagement Letter (together the **Agreement**) set out the basis on which Incresco Partners Ltd (**we, us, our**) will provide the Services to you.

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply

Business Opportunities:	any opportunities and/or New Clients which we become aware of which relate to the Products.
Client Materials:	all documents, information and materials (in any form) provided by you in connection with the Services.
Commencement Date:	the commencement date of the Engagement, as set out in the Engagement Letter.
Conditions:	these terms and conditions as amended from time to time in accordance with clause 16.
Consultant Materials:	all documents, information and materials (in any form) provided by us relating to the Services, other than the Deliverables.
Deliverables:	all documents, products and materials developed by us for you in connection with the Services.
Engagement:	our engagement, by you, on the terms of the Agreement.
Engagement Letter:	our engagement letter which sets out the Services to be provided under the Agreement.
Fee(s):	our fees for the supply of the Services, as set out in the Engagement Letter.
Intellectual Property Rights:	all intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including (without limitation) copyright, database rights, patents, service marks, trade marks (whether registered or not), trade names, registered design rights, unregistered design rights, domain names, know-how, confidential information and any applications for the protection or registration of these rights and all renewals and extensions of them throughout the world.
Introductions:	any introductions and/or referrals of New Clients and/or Business Opportunities which we make to you. Introduce, Introduces, and Introduced shall be interpreted accordingly.
Net Price:	in relation to any Products, the price actually charged to your customer less any value added or other sales tax included in the price.
New Client:	any person, firm, company or any other entity which we have introduced to you and who you have not sold Products to in the 12 months prior to the Introduction.
Products:	the products manufactured and/or sold by you from time to time and which we may assist in promoting and selling as part of the Services.
Services:	the services, including the Deliverables, as set out in the Engagement Letter.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 The headings in these Conditions are inserted for convenience only and shall not affect their construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 TERM OF ENGAGEMENT

- 2.1 You will engage us and we will provide the Services on the terms of the Agreement.
- 2.2 The Engagement will commence on the Commencement Date and shall continue unless and until terminated:
 - 2.2.1 as provided by the terms of the Agreement; or
 - 2.2.2 by either party giving to the other not less than 1 month's prior written notice.

3 OUR OBLIGATIONS

- 3.1 During the Engagement we will:
 - 3.1.1 provide the Services with all due care, skill and ability;
 - 3.1.2 use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time for performance shall not be of the essence; and
 - 3.1.3 promptly give to you all such information and reports as we may reasonably require in connection with matters relating to the provision of the Services.
- 3.2 We will comply with all reasonable standards of safety and comply with your health and safety procedures (as notified to us) from time to time in force at the premises where the Services are provided and report to you any unsafe working conditions or practices.

4 YOUR OBLIGATIONS

- 4.1 You will:
 - 4.1.1 co-operate with us in all matters relating to the Services;
 - 4.1.2 provide us, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as we reasonably require;
 - 4.1.3 provide, in a timely manner, such Client Material and other information as we may reasonably require, and ensure that it is accurate in all material respects;
 - 4.1.4 be responsible (at your own cost) for preparing and maintaining the relevant premises for the supply of the Services;
 - 4.1.5 inform us of all health and safety rules and regulations and any other reasonable security requirements that apply at any of your premises;
 - 4.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of Client Material in all cases before the date on which the Services are to start.
- 4.2 If performance of our obligations under the Agreement is prevented or delayed by any act or omission by you, your agents, subcontractors, consultants or employees, we will not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

5 FEES

- 5.1 In consideration of the provision of our Services, you will pay the Fees as set out in the Engagement Letter, which will specify whether they will be on a time and materials basis, a fixed price basis, a commission basis, or a combination of them. Clause 5.2 applies if we provide Services on a time and materials basis, clause 5.3 applies if we provide Services for a fixed price, and clause 5.4

TERMS & CONDITIONS OF ENGAGEMENT

- and clause 5.5 applies if we provide Services for a commission. The remainder of this clause 5 applies in either case.
- 5.2 Where Services are provided on a time and materials basis:
- 5.2.1 the charges payable for the Services shall be calculated in accordance with our standard daily fee rates in force from time to time;
- 5.2.2 our standard daily fee rates are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);
- 5.2.3 we will be entitled to charge an overtime rate of 100% of the normal daily fee rate on a pro-rata basis for each part day or for any time we work outside the hours referred to in clause 5.2.2;
- 5.2.4 all charges quoted to you shall be exclusive of VAT, which we will add to our invoices at the appropriate rate; and
- 5.2.5 we will invoice you monthly in arrears for our Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 5.2 and clause 5.4. Each invoice shall set out the time spent by us and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 5.3 Where Services are provided for a fixed price, the total price for the Services will be the amount set out in the Engagement Letter. We will invoice you for the Fees that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in clause 5.4.
- 5.4 Where Services are provided on a commission basis:
- 5.4.1 the commission due shall be equal to the commission percentage set out in the Engagement Letter of the Net Price of each Product which you sell to a customer who has been Introduced to you by us;
- 5.4.2 we will charge you based on the figures set out in the commission statement; and
- 5.4.3 termination of the Agreement shall not affect the continuation of this clause 5 and your continued obligation to pay commission to us in accordance with it.
- 5.5 For the purposes of establishing the amount of commission we are due:
- 5.5.1 you shall, within 14 days after the end of each calendar month, send us:
- 5.5.1.1 a statement confirming the aggregate Net Price of all Products you sell during that calendar month under a contract concluded with a customer we have Introduced; and
- 5.5.1.2 a statement of the commission due to us in that calendar month,
- 5.5.2 you shall keep separate accounts and records giving correct and adequate details of all sales of the Products and all payments received. You shall permit our duly appointed representative at all reasonable times, but no more than once in any 12 month period, to inspect all such accounts and records and to take copies of them.
- 5.6 Any fixed price, daily rate and commission contained in the Engagement Letter excludes:
- 5.6.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by us in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by us for the supply of the Services. We will invoice such expenses, materials and third party services to you; and
- 5.6.2 VAT, which we will add to our invoices at the appropriate rate.
- 5.7 The parties agree that we may review and increase any fixed price and/or daily rate and/or commission percentage contained in the Engagement Letter, provided that such charges cannot be increased more than once in any 12 month period. We shall give you written notice of any such increase 1 month before the proposed date of that increase. If such increase is not acceptable to you, you may, within 2 weeks of such notice being received or deemed to have been received in accordance with clause 19, terminate the agreement by giving us not less than 1 months' written notice to us.
- 5.8 You will pay each of our submitted invoices in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by us.
- 5.9 Without prejudice to any other right or remedy that it may have, if you fail to pay our invoices on the due date:
- 5.9.1 you will pay interest on the overdue amount (including any period after the date of any judgment against you), and late payment fees, as calculated on the basis set out in the Late Payment of Commercial Debts (Interest) Act 1998 (as amended); and
- 5.9.2 we may suspend all Services until payment has been made in full.
- 5.10 All sums payable to us under the Agreement shall become due immediately on its termination, despite any other provision. This clause 5.10 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 5.11 All amounts due under the Agreement 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 CONFIDENTIALITY**
- 6.1 We each undertake not to, at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 6.2.
- 6.2 We may each disclose the other party's Confidential Information:
- 6.2.1 to our employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out our obligations under the Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 6 as though they were a party to the Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- 6.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 We each reserve all rights in our own Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Agreement are granted to the other party or to be implied from the Agreement. In particular, no licence is hereby granted directly or indirectly under any Intellectual Property Right held, made, obtained or licensable by either party now or in the future.
- 7 INTELLECTUAL PROPERTY**
- 7.1 As between us, all Intellectual Property Rights and all other rights in the Deliverables and the Consultant Materials shall be owned by us. Subject to clause 7.2, we license all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of the Deliverables and the Services. If we terminate the Agreement under clause 10.1 this licence will automatically terminate.
- 7.2 You acknowledge that, where we do not own any of the Consultant Materials, your use of rights in the Consultant Materials is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.
- 7.3 For the avoidance of doubt all Intellectual Property Rights and all other rights in the Client Materials shall be owned by you and you

TERMS & CONDITIONS OF ENGAGEMENT

license all such rights to us free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable us to provide the Services.

8 LIMITATION OF LIABILITY

8.1 Nothing in the Agreement limits or excludes our liability for:

- 8.1.1 death or personal injury caused by our negligence;
- 8.1.2 fraud or fraudulent misrepresentation; or
- 8.1.3 any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information or any indirect or consequential loss.

8.3 Subject to clause 8.1 and clause 8.2, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the Fees received by us in any 12 month period.

9 DISCLAIMER

While the information contained in the Deliverables has been prepared in good faith, no representation or warranty, express or implied, is or will be given by us as to the accuracy, completeness or fairness of the Deliverables and, so far as permitted by law and except in the case of fraud, no responsibility or liability whatsoever is accepted for the accuracy or sufficiency of any of the information contained in the Deliverables or for any errors, opinions, omissions or misstatements, negligent or otherwise relating to the Deliverables. You must conduct your own independent investigation and analysis of the information contained in the Deliverables and bear all the costs of doing so.

10 TERMINATION

10.1 Notwithstanding the provisions of clause 2.2 and without limiting our other rights or remedies, either of us may terminate the Agreement with immediate effect by giving written notice to the other if:

- 10.1.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so;
- 10.1.2 the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- 10.1.3 the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
- 10.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

11 OBLIGATIONS ON TERMINATION

11.1 On termination or expiry of the Agreement:

- 11.1.1 you will immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we

may submit an invoice, which shall be payable immediately on receipt; and

- 11.1.2 you shall return all of the Consultant Materials. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping.

11.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

11.3 On expiry or termination of the Agreement, all provisions of the Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

12 STATUS

Our relationship to you will be that of independent contractor and nothing in the Agreement shall render us an employee, worker, agent or partner of you and we will not hold ourselves out as such.

13 FORCE MAJEURE

13.1 The obligations of each party under the Agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control, in connection with the performance of the Agreement.

13.2 In the event that the cause continues for more than 1 month either party may terminate the Agreement on 14 days' written notice to the other.

14 ASSIGNMENT

You will not, without our prior written consent, assign, transfer, charge or deal in any other manner with the Agreement or your rights or obligations under it or part of it, or purport to do any of the same, nor sub-contract any or all of your obligations under the Agreement.

15 ENTIRE AGREEMENT

The Agreement constitutes the entire understanding between us with respect to the subject matter of the Agreement and supersedes all prior agreements, negotiations and discussions between us relating to it.

16 AMENDMENTS

No amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

17 WAIVER

The failure of a party to exercise or enforce any right under the Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

18 SEVERABILITY

18.1 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19 NOTICES

Any notice required to be given pursuant to the Agreement shall be in writing and shall be given by sending the same by pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage and delivery, to the address of the relevant party set out in the Engagement Letter or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time recorded by the delivery service.

TERMS & CONDITIONS OF ENGAGEMENT

20 RIGHTS OF THIRD PARTIES

A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

21 GOVERNING LAW AND JURISDICTION

The Agreement shall be governed by and construed in accordance with English law and each party irrevocably submits to the exclusive jurisdiction of the English Courts.