

## ACCJ Director Database Terms of Use

The American Chamber of Commerce in Japan (the "ACCJ") offers a director database service consisting of a spreadsheet listing potential candidates to become directors on a corporate or other board. The spreadsheet also contains key information provided by individual ACCJ members who are potential candidates (each such member, a "Candidate") and elect to provide information in the form of a questionnaire (the "Questionnaire") as well as a "CV Book" containing the CV of each such Candidate (all such spreadsheet information and CVs as of a particular date, the "Database"). The ACCJ shall provide the Database to any company, business organization, governmental agency that expresses interest in receiving the Database for purposes of sourcing director candidates for Japanese companies (each such organization, an "Organization") (the collection of Candidate information and the provision by the ACCJ of the Database to Organizations, the "Director Database Service"). The Director Database Service is provided solely as a service to interested ACCJ members who wish to have Organizations receive the Database for such purposes.

**The ACCJ makes no recommendations or endorsements regarding any Organization or any Candidate.** The ACCJ is not in a position to review the merits of participating Organizations or Candidates. Each Candidate and each Organization agrees to be responsible for scheduling interviews and establishing terms of service and compensation for any director position.

Inclusion in the Database is voluntary. A Candidate may request a copy of the Questionnaire from the ACCJ contact listed on the ACCJ website. The ACCJ shall provide an acknowledgement form whereby the Candidate shall agree to be bound by these Terms of Use (the "Terms"). After the ACCJ receives the signed "Terms of Use" the completed Questionnaire and the member's CV, the member's information shall be included in the Database and the member shall thereby become a Candidate. The member may withdraw as a Candidate at any time by written notice to the ACCJ contact.

An Organization may request access to the then-current Database from the ACCJ contact listed on the ACCJ website. The ACCJ shall provide instructions for payment of the fee, which shall be JPY 25,000 and an acknowledgement form whereby the Organization shall agree to be bound by these Terms. After the ACCJ receives the fee and the countersigned acknowledgement form, the Organization shall receive access to the then-current Database, which contains information regarding all currently active Candidates, on a one-time basis. Any future request will be subject to the payment of an additional fee.

The ACCJ reserves the right to refuse or terminate offering the Director Database Service to any Candidate or to any Organization or its employees or agents who do not comply with the Terms.

The ACCJ provides access to the Database to allow Organizations to review Questionnaires and CVs. The Database is for the use of Organizations and current ACCJ members only.

These Terms outline the policies governing the use of the Database for Candidates and Organizations. The ACCJ reserves the right to change these Terms and/or the nature of functionality of the Database at any time.

## **For Candidates:**

Credentials, abilities, qualifications, and interests must be stated honestly and accurately. CV, cover letter and profile information provided in a written, oral, or indirect manner must be truthful and accurate. The ACCJ encourages every Candidate to undergo director training. Any deliberate misrepresentation, including, but not limited to changing profile information to gain director position, may result in loss of ability to participate in the Director Database Service.

The ACCJ may review or use any documents submitted for inclusion into the Database for the purpose of ensuring quality and appropriateness of those documents and/or evaluating the Database or outcomes.

The ACCJ will disclose the Database to Organizations. ACCJ will make CVs and Questionnaires available to prospective Organizations through access to the Database and/or through the media of email, print, and other electronic media. Each Candidate agrees to hold the ACCJ, its officers, governors, employees, representatives, and assignees harmless from any damages that they might incur as a result of information so released.

Each Candidate is responsible for its use of the Database, for any content the Candidate provides to the Database, and for any consequences thereof. The Candidate should only provide content that the Candidate is comfortable sharing with the ACCJ and Organizations in accordance with these Terms. Candidates may not share any ACCJ passwords or other account access information with any other party, or do anything else that might jeopardize the security of any ACCJ database. Each Candidate is responsible for all uses of ACCJ registrations by Candidate and ACCJ passwords given to Candidate, whether or not such uses were authorized by Candidate. Each Candidate agrees to immediately notify the ACCJ of any unauthorized use of ACCJ account or passwords. The ACCJ may un-sync, reset or terminate ACCJ Passwords at its sole discretion and for any reason. The ACCJ cannot and will not be liable for any loss or damage arising from Candidate's failure to comply with the above.

## **Warranties and Liability**

While the ACCJ will take reasonable measures to confirm that Organizations and director positions are legitimate, the ACCJ is not liable for the accuracy of Organizations and information contained in the Database. The ACCJ expressly disclaims any and all liability for vetting Organizations or director positions. **Each Candidate is solely responsible for its own determination as to whether to consider or join any Organization. Each Candidate takes sole and exclusive responsibility for conducting diligence in relation to any Organization he or she considers.**

## **Privacy Policy**

The ACCJ is committed to maintaining the privacy of a Candidate's personal information submitted to the Director Database Service. Use of the Director Database Service is subject to the ACCJ's Privacy Policy and these Terms.

Information collected through the Director Database Service will be used for the following:

- To enable Organizations to access and use the Database. The ACCJ will reasonably attempt to verify that only bona fide Organizations are allowed access to the Database.
- To communicate with Organizations and Candidates regarding use of the Database.

The ACCJ receives and collects personal identifiable information about a Candidate (name, contact information, demographic information, academic history, employment history, etc.) from documents that each Candidate submits and from a Questionnaire the Candidate completes after registering with the Director Database Service.

The ACCJ will include some of the Candidate's personal information when giving access to the Database to Organizations.

Organizations that use the Database will have access to the Database and the personal information contained therein for recruiting, interviewing, and hiring purposes. The ACCJ is not responsible for what an Organization does with the personal information that is available or accessible via the Database.

While the ACCJ restricts access to the Database to Organizations following relevant laws and guidelines, the Candidate should be aware that other parties might gain access to the Database without the ACCJ's consent. The ACCJ undertakes to comply with applicable laws and guidelines regarding access to personal information; however, the ACCJ cannot provide absolute assurance that one or more third parties will not obtain unauthorized access to the Database.

The Candidate acknowledges and agrees that certain staff and leaders of the ACCJ, as well as certain Organizations seeking directors, will have access to information about each Candidate and his or her interest in serving as a director.

The Candidate may choose to limit the amount of personal information in his or her CV. Personal information includes information that can identify the Candidate or the Candidate's specific location such as the Candidate's name, address, telephone number and email address ("Personal Information"). The ACCJ suggests that a Candidate includes his or her name, telephone number and email addresses only. Under no circumstances should the Candidate include sensitive information, such as the Candidate's My Number, birthdate, social security number, passport identification number, or driver's license number.

If the Candidate chooses to include Personal Information in the CV, both the ACCJ and the Organizations will have access to such Personal Information and may use this information to contact the Candidate directly about director positions. If a Candidate has questions or concerns about the use of Personal Information by an Organization, then the Candidate should review the privacy policy for that Organization. The Candidate agrees that the ACCJ is not responsible for the use of the Candidate's Personal Information by an Organization.

For the avoidance of doubt, the ACCJ will not use the Candidate's Personal Information, as submitted in a CV or the Questionnaire for any purpose other than as stated herein, but the ACCJ accepts no liability for the consequences of an Organization using a Candidate's Personal Information for other purposes, such as marketing.

The Candidate may request removal of his or her Questionnaire and CV from the Database at any time, but the ACCJ cannot ensure that such removal will result in removal of the Candidate's Personal Information from the databases and records of Organizations.

### **For Organizations:**

The ACCJ grants access to the Database to each qualified Organization solely for the purpose of reviewing and contacting Candidates about director positions. By accessing the Database, each Organization expressly agrees that the Organization will not use the name, address, telephone number, email address, or any other personally identifiable information of any Candidate for any other purpose, including without limitation online

marketing. Each Organization also agrees not to distribute the CVs to any person who does not have a need-to-know.

The ACCJ grants authorized Organizations a limited and terminable right to access and use the Database for the purpose of seeking candidates for director positions.

The ACCJ will collect information from Organizations in connection with the use of the Database. This information may include contact information (such as phone numbers or e-mail addresses) and demographic information (such as location, type of company and business of the Organization). Any information collected for billing/invoicing purposes will be used only for those purposes stated.

#### Database Policies:

No Organization may sell, transfer, or provide access to the Database to any person or entity outside of the Organization. Furthermore, no Organization may contact a Candidate from the Database to disseminate false, inaccurate, or misleading information; no Organization may post advertisements or solicitations to Candidates for employment in other positions.

Organizations and Candidates may change or correct personal information at any time by e-mail request.

All information provided by an Organization to a Candidate must be accurate, true, not misleading or deceptive in any manner, and must comply with all applicable laws (including laws prohibiting discrimination). Organizations and recruiters may use the Database solely to identify Candidates for actual director positions. Communications to Candidates may not contain any form of advertisement, promotion or endorsement other than promotion of the position itself. Neither Organizations nor recruiters may require any form of upfront payment from any Candidate.

The ACCJ encourages Organizations to require their current and future directors to undergo director training.

**Each Organization is solely responsible for its own determination as to whether to consider, interview, confirm credentials of or appoint any Candidates. Each Organization takes sole and exclusive responsibility for conducting diligence in relation to any Candidate it considers. The ACCJ expressly disclaims any and all liability for vetting Candidates.**

#### **TERMS APPLICABLE TO BOTH ORGANIZATIONS AND CANDIDATES**

By using the Director Database Service, each Candidate and each Organization acknowledges and agrees to follow these Terms.

By utilizing the Director Database Service (i) each Candidate consents to the collection and use of the Candidate's information in accordance with these Terms, and (ii) each Candidate and each Organization represents and warrants that it has the authority to bind itself or the company, organization, or other legal entity that acts as its agent or representative to these Terms.

#### **1. Limitations on Use.**

Each Candidate acknowledges the ACCJ's ownership of ACCJ content and trademarks. No Candidate nor any Organization may: (a) change or delete any proprietary notices from materials printed or downloaded from the Database; (b) refer to or attribute any information to the ACCJ or its licensors in any public medium (e.g., press release, websites) for advertising or promotion purposes, or for the purpose of informing or influencing any third party; or (c) aggregate, copy or duplicate in any manner any ACCJ content. Use, reproduction, modification, distribution or storage of any ACCJ content or Candidate content

for other than purposes of using the Database is expressly prohibited without prior written permission from the ACCJ. No Organization may sell, license, rent, or otherwise use or exploit any Candidate content for commercial use or in any way that violates any third party right.

## **2. Unauthorized Use or Access.**

Each Candidate and each Organization agrees to notify the ACCJ in writing promptly upon becoming aware of any unauthorized access or use of the Database by any individual or entity or of any claim that the Database infringes upon any copyright, trademark, or other contractual, statutory, or common law rights of any person.

## **3. Reservation of ACCJ Rights.**

The ACCJ reserves the right to refuse to accept, or transmit any Candidate content in its sole discretion. The ACCJ further reserves the right (but with no obligation) to remove or refuse to supply to any Organization any Candidate content and to suspend or terminate use by any Candidate or Organization.

## **4. Information.**

Each Candidate and each Organization agrees to provide accurate and complete information, and to inform the ACCJ of any changes to that information.

## **5. Consent of Candidate.**

Each Candidate agrees that information provided by the Candidate will be included in Database and disclosed to Organizations. By submitting information, the Candidate consents to such disclosure and agrees that the Candidate has opted in to these Terms.

## **6. No Warranty.**

The ACCJ makes no representation or warranty regarding the effectiveness or timeliness of the Database in meeting the objectives of Candidates or Organizations. The ACCJ makes no representation or warranty that any Candidate will be engaged as a director and the ACCJ is not responsible for any decision made by an Organization or a Candidate in relation to a director position, for whatever reason.

## **7. Errors and Corrections.**

The ACCJ does not represent or warrant that the Database is or will be error-free, free of viruses or other harmful components, or that defects will be corrected or that it will always be accessible. The ACCJ may make improvements and/or changes to the Database's features, functionality or content at any time.

## **8. Disclaimer.**

Use of the Database is at the sole risk of each Candidate and each Company and is provided on an "as is" basis. The ACCJ expressly disclaims all warranties, and makes no warranties of any kind, express or implied, as to the Database, including but not limited to the warranties of merchantability, title, fitness for a particular purpose or use and non-infringement. The ACCJ disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from, arising out of or any way related to (A) any errors in or omissions from this site including, but not limited to, technical inaccuracies and typographical errors, (B) third party content directly or indirectly accessed through links in this site, including, but not limited to any errors in or omissions therefrom, (C) the unavailability of the database, or any portion thereof, or (D) the use of the database by any candidate or company.

## **9. Limitation of Liability.**

To the fullest extent permitted by law, neither the ACCJ nor any ACCJ officer, governors, employees, representatives, and assignees thereof shall be liable for any damages

whatsoever (including, without limitation, incidental and consequential or punitive damages, lost profits, or damages resulting from lost data, lost employment opportunity, loss of goodwill) resulting from the use or inability to use the Database, and whether or not the ACCJ is notified of the possibility of such damages. To the fullest extent permitted by law, the ACCJ's maximum liability arising out of or in connection with the database, regardless of the cause of action (whether in contract, torts, breach of warranty or otherwise), will not exceed ten thousand Japanese Yen (JPY10,000).

#### **10. Indemnification.**

Each Candidate and each Organization agrees, to the maximum extent permitted by law, at its own expense, to indemnify, defend, and hold harmless the ACCJ, its officers, governors, employees, representatives and assignees from and against all claims, suits, proceedings, disputes, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable attorneys', expert, legal and accounting fees (including costs of defense of claims, suits or proceedings brought by third parties), in any way related to (i) such person's access to or use of the Database (including negligent or wrongful conduct) or of any other person accessing the Database using a Candidate's account or (ii) breach by such person of any of these Terms or of any other person accessing the Database using a Candidate's account. Each Candidate and each Organization agrees to pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by or in connection with or arising from any such claim, suit, action, or proceeding attributable to any such claim. The ACCJ reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the respective Candidate or Organization, in which event such person will fully cooperate with the ACCJ in asserting any available defense. Each Candidate and each Organization acknowledges and agrees to pay the ACCJ's reasonable attorneys' fees incurred in connection with any and all lawsuits brought against such person by the ACCJ under these Terms and any other terms and conditions of service on this Database, including without limitation, lawsuits arising from the failure of such person to indemnify the ACCJ pursuant to these Terms.

#### **11. Third Party Rights.**

The provisions of Sections 8 (Disclaimer), 9 (Limitation of Liability), and 10 (Indemnification) are for the benefit of the ACCJ and its officers, governors, employees, representatives, assignees, and any third party information providers to this Database. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against each Candidate and each Organization on its own behalf. These Terms do not confer any other third party beneficiary rights.

#### **12. Unlawful Activity; Termination of Access.**

The ACCJ reserves the right to investigate complaints or reported violations of the Terms and to take any action it deems appropriate including, but not limited to, reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to Candidate profiles, e-mail addresses, usage history, posted materials, IP addresses and traffic information. The ACCJ may discontinue any Candidate's or Organization's participation in or use of the Database at any time for any reason or no reason.

#### **13. Reservation of Rights.**

The ACCJ reserves all rights not expressly granted to Candidates or Organizations. The ACCJ reserves the right to seek all remedies available at law for violations of these Terms, including but not limited to the right to stop use of the Database by a particular Candidate or Organization and any other ACCJ websites and their features. Failure to enforce any of these Terms will not be considered a waiver. Nothing in these Terms shall prevent the ACCJ from complying with the law.

**14. Governing Law and Jurisdiction.**

The Terms are governed by and construed in accordance with the laws of Japan and any action arising out of or relating to these terms shall be filed only in courts located in Tokyo, Japan, and each Candidate and each Organization hereby consents and submits to the personal jurisdiction of such courts for the purpose of litigating any such action.

**15. Entire Agreement.**

The use of this Database by each Candidate and each Organization is subject to the ACCJ's privacy policy. These Terms and the privacy policy make up the entire agreement between the parties regarding the Database, and supersede any prior agreements.

**16. Severability.**

If any portion of these Terms is found to be unlawful, void or unenforceable, the remaining portion will remain in full force and effect.

**17. Modifications to Terms.**

The ACCJ may revise these Terms at any time and will notify Candidates and Organizations by posting an updated version on ACCJ's website. The ACCJ recommends that each Candidate and each Organization visit the respective ACCJ website page periodically to review the most current Terms that are binding on Candidates and Organizations. The continued use by any Candidate or Organization of the Database following changes to these Terms or any other policies incorporated herein constitutes acceptance of ACCJ amended Terms or policies.

**18. Administration of the Director Database Service and Appropriate Use.**

By using the Director Database Service, all Candidates and Organizations agree to represent themselves and/or their organization honestly, accurately, and professionally. Candidates and Organizations are encouraged to report violations of these Terms to ACCJ in writing.

**19. Authorized Users**

The Database is intended for use by ACCJ members and by Organizations seeking directors. Only individuals who are current members of the ACCJ may use the Database. Organizations that have expressed interest in seeking directors from the Database are entitled to do so. In addition, ACCJ staff members have access to the Database as necessary for its administration.

These Terms took effect on (date)\_\_\_\_\_.

Name: \_\_\_\_\_ Signature: \_\_\_\_\_