

AGREEMENT AND TERMS OF BUSINESS

If you have any questions about these Terms of Business please contact us. Your attention is specifically drawn to clause 9 (Limitation of Liability)

1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply:

“Applicant”	means the person introduced by the Agency to the Client for an Engagement;
“Client”	means the person; firm or corporate body together with any subsidiary or associated Company (as defined by the Companies Act 2006) to which the Applicant is introduced;
“Agency”	means Trustees Unlimited LLP
“Engagement”	means the engagement of the Applicant by the Client on a permanent or temporary basis, as a trustee or otherwise and whether under a contract of service or for services, or any other engagement including in a voluntary capacity;
“Appointment Fee”	has the meaning given in clause 3.2(b);
“Initial Fee”	has the meaning given in clause 3.2(a);
“Introduction”	means (i) the Client’s interview of an Applicant in person or by telephone, following the Client’s instruction to the Agency to search for an Applicant; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Applicant; and which leads to an Engagement of that Applicant;
“Services”	the Services comprised within the relevant service level selected by the Client and set out on the Agency’s website from time to time.
“Turnover”	means (i) the turnover figure shown on the Client’s last annual accounts filed at Companies House or the Charity Commission (as the case may be) or (ii) the figure agreed between the Client and the Agency pursuant to clause 3.5.

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

1.3. The headings contained in these Terms of Business are for convenience only and do not affect their interpretation.

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 an Applicant or the passing of any information about the Applicant 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 of Business prevail over any other terms of business or purchase conditions put forward by the Client. Nothing in this agreement seeks to exclude liability for fraud or fraudulent misrepresentation.
- 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 and a copy of the varied terms is given to the Client stating the date on which such varied terms shall apply.

3. NOTIFICATION AND FEES

3.1. The Client agrees:

- a) to notify the Agency immediately of any offer of an Engagement which it makes to the Applicant;
- b) to notify the Agency immediately that its offer of an Engagement to the Applicant has been accepted; and
- c) to pay the Agency's fee within 14 days of the date of invoice.
- d) any person sourced from outside the Agency's search and selection must be brought to the attention of the Agency and an Appointment Fee will be charged in the event that such person is subsequently employed or engaged by the Client.

3.2. In consideration of the Agency providing the Services, the Client agrees to pay to the Agency:

- a) a fee calculated in accordance with the table in clause 3.3 below upon first instructing the Client to identify an Applicant ("**Initial Fee**") and
- b) a further fee calculated using the table in clause 3.4 below in respect of each successful Engagement ("**Appointment Fee**")

3.3. The Initial Fee shall:

- a) be calculated by reference to the Turnover of the Client in accordance with the following table:

Turnover	Initial Fee
Less than £1m per annum	£500
£1m - £5m per annum	£1,000
£5m - £25m per annum	£1,500
Over £25m	£2,000

- b) unless the parties agree otherwise, be non-refundable.

3.4. The Appointment Fee shall:

- a) be calculated by reference to the Turnover of the Client and the Services requested in accordance with the following table:

Service	Less than £1m	£1m - £5m	£5m - £25m	Over £25m
Basic	£250	n/a	n/a	n/a
Standard	£3,000	£3,500	£4,000	£4,500

- b) be refundable only in the circumstances set out in clause 4 below.

c) a supplement of 10% will be added where a candidate is appointed as Chair or Chair designate

3.5. Where:

- a) the Client is not required by law to file statutory accounts that it is otherwise required by law to file;
or
- b) the Client has failed to file statutory accounts; or
- c) the Agency, in its reasonable opinion, considers that the turnover figure filed in the last accounts is too out of date to be relied upon;

the Client will submit to the Agency a turnover figure that it reasonably considers is representative of the current annual turnover of the Client. If the Agency accepts this figure, it shall stand as the Client's turnover for the purposes of these Terms of business.

3.6 Any reasonable expenses incurred by the Agency will be charged to the Client in the discretion of the Agency. The cost of one visit to the client will be met by Trustees Unlimited but any further expenses will be charged at cost.

3.7 The direct engagement of an Applicant by a Client where the Applicant was introduced by the Agency or the introduction of the Applicant to a third party renders the Client subject to the introduction fee calculated against the turnover of the Client and will be charged at the Standard Rate as shown in 3.3 and 3.4 provided that the engagement takes place within 24 months of the introduction.

3.8 If the Agency produces a short list of Candidate(s) that in the opinion of the Agency are of a standard that they are credible in terms of appointment by the Client and if the Client then chooses to not see the Candidate(s) for whatever reason, it is acknowledged by the Client that the Agency will incur substantial economic damage and loss as agreed. It is agreed that the Client will pay to the Agency a sum equivalent to the charge at the Standard Rate as shown in 3.3 and 3.4 and these liquidated damages represent a fair, reasonable and appropriate estimate of the cost to the Agency for the work rendered which the Client accepts.

4. REFUNDS

4.1. In order to be entitled to the following refund, the Client must pay the Agency's fee within 14 days of the date of invoice and must notify the Agency in writing of the termination of the Engagement within 7 days of its termination.

4.2. If the Engagement terminates before the expiry of 12 weeks from the date of Engagement the Agency will seek to replace the Applicant free of charge or, if this is not possible, will refund 30% of the fee paid.

5. CANCELLATION FEE

5.1 If, after an offer of Engagement has been made to the Applicant, the Client decides for any reason to withdraw it before the Applicant has accepted it, the Client shall only be liable to pay the Agency a sum equivalent to 30% of the relevant Appointment Fee.

6. INTRODUCTIONS

6.1. Introductions of Applicants are confidential. The disclosure by the Client to a third party of any details regarding an Applicant introduced by the Agency which results in an Engagement with that third party within 6 months of the Introduction renders the Client liable to payment of the Agency's fee as set out in clause 3 with no entitlement to any refund.

6.2. A fee calculated in accordance with clause 3 will be charged in relation to any Applicant engaged as a consequence of or resulting from an introduction by or through the Agency, whether direct or indirect, within 6 months from the date of the Agency's Introduction.

7. SUITABILITY AND REFERENCES

- 7.1. The Agency endeavours to ensure the suitability of any Applicant introduced to the Client by obtaining confirmation of the Applicant's identity; that the Applicant has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and that the Applicant is willing to work in the position which the Client seeks to fill.
- 7.2. The Agency endeavours to take all such steps as are reasonably practicable to ensure that the Client and Applicant are aware of any requirements imposed by law or any professional body to enable the Applicant to work in the position which the Client seeks to fill.
- 7.3. The Agency endeavours to take all such steps as are reasonably practicable to ensure that it would not be detrimental to the interests of either the Client or the Applicant for the Applicant to work in the position which the Client seeks to fill.
- 7.4. The Agency shall have no liability to the Client in respect of any of the matters referred to in clauses 7.1, 7.2 and 7.3 above and the Client shall satisfy itself as to the suitability of the Applicant. The Client shall have full opportunity to take up any references provided by the Applicant to it or the Agency before engaging such Applicant. The Client is responsible for obtaining work permits and/or such other permission to work as may be required, checking for any conflicts of interest, arranging medical examinations and/or investigations into the medical history of any Applicant, and satisfying any medical and other requirements, qualifications or permission required by law of the country in which the Applicant is engaged to work.
- 7.5. To enable the Agency to comply with its obligations under clauses 7.1, 7.2, 7.3 and 7.4 above the Client undertakes to provide to the Agency details of the position which the Client seeks to fill, including the type of work that the Applicant would be required to do; the location and hours of work; the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Applicant 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 the Applicant to commence, the duration or likely duration of the work; the minimum rate of remuneration if applicable, expenses and any other benefits that would be offered; the intervals of payment of remuneration if applicable and the length of notice that the Applicant would be entitled to give and receive to terminate the engagement with the Client.

8. SPECIAL SITUATIONS

- 8.1 Where the Applicant is required by law, or any professional body to have any qualifications or authorisations 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 take all reasonably practicable steps to obtain and offer to provide copies of any relevant qualifications or authorisations of the Applicant, two references from persons not related to the Applicant who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Applicant is suitable for the position. 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 in any event.

9. LIMITATION OF LIABILITY – THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 This clause 9 sets out the entire financial liability of the Agency (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
 - a) any breach of these terms including any deliberate breach by the Agency or its employees, agents or subcontractors; and
 - b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

9.3 Nothing in these terms limits or excludes the liability of the Agency:

- a) for death or personal injury resulting from negligence; or
- b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Agency.

9.4 Subject to clause 9.2 and 9.3:

a) The Agency shall not be liable for:

- i) loss of profits;
- ii) loss of business; or
- iii) depletion of goodwill and/or similar losses;
- iv) loss of goods;
- v) loss of contract;
- vi) loss of corruption of data or information;
- vii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
- viii) any acts or omissions of the Applicant; and

b) the Agency's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the services to be provided by the Agency shall be limited to the total fee paid to the Agency pursuant to these Terms.

10. LAW

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

Signed for and on behalf of the Client

Dated