



Heritage Independent Living Terms of Business Ref: HTB0702

1. DEFINITIONS

Applicant: an individual Introduced by Heritage Independent Living to the Client to provide services to the Client on the terms agreed between the Client and Applicant.

Client: the person requiring the services of the Applicant or the person legally entitled to contract on behalf of the Client

Guarantor: means any person signing these terms on behalf of a Client

Introduce: the provision to the Client of information by Heritage Independent Living by way of a profile or in such format as the Client may from time to time require which identifies the Applicant. Introduction and Introduced shall be construed accordingly.

2. HERITAGE INDEPENDENT LIVING'S OBLIGATIONS

- 2.1 Heritage Independent Living agrees to search for Applicants for the Client who meet the Client's minimum qualifications and other criteria for the assignment.
- 2.2 Heritage Independent Living agrees to screen all Applicants and Introduce the Client to Applicants who satisfy or, more usually surpass, the minimum criteria for the assignment as set out by the Client in accordance with clause 2.1 and have an interest in the assignments for which they are Introduced.
- 2.3 Where an Applicant is required by law or any professional body to have any qualifications or authorisations to work on the assignment or the assignment involves working with any Vulnerable Persons, Heritage Independent Living will take all reasonably practicable steps to obtain, and offer to provide copies of, any relevant qualifications or authorisations and two references. Heritage Independent Living will also take all reasonably practicable steps to confirm that the Applicant is suitable for the assignment. If Heritage Independent Living is unable to fully comply with these requirements, it shall inform the Client of the steps it has taken to supply the necessary information.
- 2.4 Prior to the commencement of the assignment, Heritage Independent Living will send the Client written confirmation of:
 - (a) the identity of the Applicant, including a copy of the Applicant's photo ID; and
 - (b) the Applicant's profile including relevant experience, training qualifications and authorisations necessary for the assignment.
 - (c) A copy of the Applicant's DBS (Disclosure and Barring Service – formerly DBS))
- 2.5 Heritage Independent Living shall notify the Client immediately if it becomes aware of any matter that indicates an Applicant may be unsuitable for the assignment or is inconsistent with any information previously provided including where a Applicant ceases to have the appropriate skills, approvals or a right to work in the United Kingdom or where this agreement may be or has been breached.

3. CLIENT'S OBLIGATIONS

- 3.1 On signature of Terms and Conditions of Business (HTB0702RF) – Registration and Fees, the Client shall pay to Heritage Independent Living a non-refundable Registration Fee as set out in HTB0702RF
- 3.2 When making a request for the provision of an Applicant to perform an assignment the Client will give Heritage Independent Living details of:
- (a) the date on which the Client requires the Applicant to commence work and the duration, or likely duration, of the work;
 - (b) the assignment which the Client seeks to fill, including the type of work the Applicant in that position would be required to do, the location at which, and the hours during which, the Applicant would be required to work, and any risk to health or safety known to the Client and what steps the Client has taken to prevent or control such risks; and
 - (c) the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for the Applicant to possess in order to work in the position.
- 3.3 Prior to the commencement of the assignment, the Client shall agree with the Applicant the amount of payment for the service and terms for the assignment.
- 3.4 The Registration Fee, the Agency Fee (Introduction Fee) and the Release Fee [see HTB0702RF] are in addition to any payment due by the Client to the Applicant for the assignment. Heritage Independent Living accepts no liability for any payments due to the Applicant for the assignment. All fees to Heritage Independent Living are payable in sterling only.
- 3.5 A full Agency Fee will be charged for any Applicant engaged as a consequence or resulting from an application to Heritage Independent Living by a Client even if the Introduction is made indirectly.
- 3.6 The Client undertakes to notify Heritage Independent Living if the Applicant for a temporary assignment remains with the Client following the period agreed with Heritage Independent Living by the Client and in such an event, the Client will be liable to ongoing fees or payment of the Release Fee as set out in HTB0702RF.
- 3.7 The Client agrees to engage the Applicant on the basis that the Applicant is acting in a self-employed capacity and therefore neither the Client nor Heritage Independent Living is liable to deduct any income tax or national insurance contributions made to the Applicant.
- 3.8 If the Client allows the Applicant to use either the Client's car or their car, then the Client does so at their own risk. Before permitting such use, the Client agrees to inspect the Applicant's driving license to ensure he or she is allowed to drive the type of car concerned and that the Client ensures that there is appropriate insurance in place.
- 3.9 If the Client wishes to terminate an assignment once the Applicant has started the assignment, the Client will give Heritage Independent Living a minimum of one week's notice of such an intention or pay in lieu one week's Agency Fee, in addition to any outstanding Agency Fees already incurred.
- (a) It is recommended that the Client will recompense the Applicant for loss of earnings equivalent to three days' work, rising to five days if less than 48 hours' notice has been given.

4. INTRODUCTION AGENCY FEE (AGENCY FEE)

- 4.1 The Client will pay Heritage Independent Living the Agency Fee in respect of the Applicant introduced for the assignment as set out in HTB0702RF. The following conditions apply to the Agency Fees:
- (a) they are calculated according to the number of days or weeks worked by the Applicant;
 - (b) invoices will be sent out to the client weekly for the first four weeks and monthly thereafter;
 - (c) invoices will be sent to a maximum of one email and one postal address; and
 - (d) invoices are payable within seven days of receipt.
- 4.2 If the Client confirms the assignment and then cancels the assignment prior to the Applicant starting, the Client will need to pay the Applicant for three days work, rising to five days if less than 48 hours' notice has been given. In both cases, the Client will be charged two weeks' Agency Fee.
- 4.3 If the Client cancels the assignment once the Applicant has started without giving the minimum notice period (see section 3.9), the Client will be charged one week's Agency Fee in addition to any outstanding Agency Fees already incurred.
- 4.4 If an Applicant introduced by Heritage Independent Living is rejected by the Client or the Applicant rejects the assignment, the Agency Fee will be payable if the Applicant is subsequently booked by the Client at any time.

5. RELEASE FEE

- 5.1 If the Client intends to continue the hire of the Applicant (including the use of another agency) other than through Heritage Independent Living, a Release Fee of £2,500 plus VAT will be payable to Heritage Independent Living.

6. ADDITIONAL FEE INFORMATION

- 6.1 Where applicable, VAT at the prevailing rate is included in the fees.
- 6.2 In the event of the end user's death, Heritage Independent Living will only invoice Agency Fees while the Applicant is required at the Client's Household.
- 6.3 Due to the complexity of recruiting and introducing Applicants over the Christmas period, Heritage Independent Living will make an additional charge of £125 (including VAT) if the assignment includes any day over the period 22nd December to 2nd January inclusive.
- (a) This additional charge will not be levied where Clients are already in a long term ongoing commitment with established carers.
- 6.4 If the Client fails to make any payment due to Heritage Independent Living under these Terms of Business by the due date for payment, then, the Client shall pay an administrative fee of £15 for every 21 days late and interest on the overdue amount at the rate of 4% per annum above Lloyd's Bank plc 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 together with the administration charge and overdue amount.

7. CHANGES TO BUSINESS TERMS AND CONDITIONS, INCLUDING FEES

7.1 Heritage Independent Living has right to revise and amend these Terms of Business or change its fees from time to time. If it does, then Heritage Independent Living will give the Client at least two months' prior written notice.

8. LIMITATION OF LIABILITY

8.1 Heritage Independent Living accepts no liability whatsoever for any loss or damage of whatever nature arising directly or indirectly from any act or omission of any Applicant introduced by Heritage Independent Living, even if such act or omission is negligent or fraudulent.

8.2 Heritage Independent Living's total liability to the Client in respect of all other losses arising under or in connection with these Terms of Business, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Introduction Fee.

9. CONFIDENTIALITY

9.1 All information provided to the Client by Heritage Independent Living is, and must, remain confidential. If the Client passes on the details of a candidate to a third party within twenty four months of the Introduction and the third party subsequently engages the Applicant's services, the Client is liable for the Release Fee.

9.2 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3.

9.3 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under these terms and conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.4 No party shall use any other party's confidential information for any purpose other than to perform its obligations under these Terms of Business.

10. DATA PROTECTION COMPLIANCE

10.1 Heritage Independent Living will comply with its obligations under the Data Protection Act 1998 in respect of the Client's personal data. By registering with Heritage Independent Living and accepting these Terms of Business, the Client consents to Heritage Independent Living processing the Client's personal data (including sensitive personal data) so that Heritage Independent Living may properly provide the service in accordance with these terms.

10.2 To the extent that any data or information belonging to the Client is personal data within the meaning of the Data Protection Act 1998 or equivalent legislation in the territory:

- (a) Heritage Independent Living will not transmit such data and information to a country or territory outside the European Economic Area without the Client's prior express written consent; and
- (b) Heritage Independent Living will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information.

11. WARRANTIES AND UNDERTAKINGS

- 11.1 Heritage Independent Living warrants that it has the necessary expertise to provide the services contemplated in these Terms of Business and will perform them in keeping with the highest professional business standards by using appropriately qualified, experienced and trained personnel.
- 11.2 Heritage Independent Living warrants that it does and it shall comply with the all relevant statutes, laws, regulations and codes of practice from time to time in force.
- 11.3 Each party warrants that it has full capacity and authority to agree to and perform under these Terms of Business.

12. NON-SOLICITATION

The Client will not, either on their own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during the assignment, or for a period of twenty four months from the Introduction of an Applicant, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person who has worked on the services provided under these Terms of Business.

13. ASSIGNMENT AND OTHER DEALINGS

Heritage Independent Living may transfer its rights and obligations under these Terms of Business to another organisation. This will not affect the Client's rights or Heritage Independent Living obligations under these Terms of Business

14. NO PARTNERSHIP OR AGENCY

- 14.1 Nothing in these Terms of Business is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

15. ENTIRE AGREEMENT

- 15.1 These Terms of Business constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Nothing in this clause shall limit or exclude any liability for fraud.

16. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

17. NOTICES

17.1 Any notice given to a party under or in connection with these Terms of Business shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

17.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

17.4 Each clause of these Terms of Business operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

17.5 A waiver of any right under these Terms of Business or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under these Terms of Business or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.6 No variation of these Terms of Business shall be effective unless it is agreed in writing and signed by Heritage Independent Living.

18. GOVERNING LAW

These Terms of Business and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction.

These Terms of Business have been entered into by the Client / Guarantor on either the date of signature on document "HTB0702RF - Registration and Fees" or on the date of written acceptance of these Terms of Business.