



## Heritage Independent Living Terms of Business Ref: HILTB v5.1

### 1. DEFINITIONS

**Applicant:** an individual Introduced by Heritage Independent Living Ltd 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 any person signing these terms on behalf of a Client.

**Introduce:** the provision to the Client of information by Heritage Independent Living Ltd by way of a profile or in such format as the Client may from time to time require which identifies the Applicant.

### 2. HERITAGE INDEPENDENT LIVING'S OBLIGATIONS

2.1 Heritage Independent Living Ltd 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 Ltd 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.

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 Ltd 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 Ltd will also take all reasonably practicable steps to confirm that the Applicant is suitable for the assignment. If Heritage Independent Living Ltd 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 Ltd will send the Client the Applicant's profile including relevant experience, training qualifications and authorisations necessary for the assignment;

- (a) Information on the Applicants Enhanced DBS (Disclosure and Barring Service) or equivalent.
- (b) Information on the Applicants Nationality and, where appropriate, visa status.
- (c) A photograph of the Applicant for identification purposes

Applicants will be instructed to arrive with copies of their Passport, DBS (or equivalent), driving licence (if applicable) and the Client is recommended to check this information for themselves.

2.5 Heritage Independent Living Ltd 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 an 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 (HILRF v5.1) – Registration and Fees, the Client shall pay to Heritage Independent Living Ltd a non-refundable Registration Fee as set out in HILRF v5.1.

3.2 When making a request for the provision of an Applicant to perform an assignment the Client will give Heritage Independent Living Ltd 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 HILRF v5.1] are in addition to any payment due by the Client to the Applicant for the assignment. Heritage Independent Living Ltd accepts no liability for any payments due to the Applicant for the assignment. All fees to Heritage Independent Living Ltd 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 Ltd by a Client even if the Introduction is made indirectly.
- 3.6 The Client undertakes to notify Heritage Independent Living Ltd if the Applicant for a temporary assignment remains with the Client following the period agreed with Heritage Independent Living Ltd 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 HILRF v5.1.
- 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 Ltd 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 wished to terminate an assignment once the Applicant has started, then:
- (a) In the case of an Ongoing Assignment, the Client will give Heritage Independent Living Ltd a minimum of two weeks' notice. If less than two weeks' notice is given, the client will pay, in lieu, one week's Agency Fee, in addition to the Agency Fees due.
  - (b) In the case of Respite or Fixed Term Assignments, the Client will give Heritage Independent Living Ltd a minimum of one week's notice. If less than one week's notice is given, the client will pay, in lieu, one week's Agency Fee, in addition to the Agency Fees due.
  - (c) In either case, it is recommended that the Client recompenses 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 Ltd the Agency Fee in respect of the Applicant introduced for the assignment as set out in HILRF v5.1. 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) weekly assignments are inclusive of both days when the Applicant starts and ends;
  - (c) a full weekly fee will be due for any parts of a week worked;
  - (d) invoices will be sent out to the client weekly for the first four weeks and four weekly thereafter;

- (e) weekly invoices will be raised one week in arrears and four weekly invoices will be raised during the third week of the four-week period;
- (f) invoices are payable within seven days of receipt; and
- (g) invoices will be sent to a maximum of one email and one postal address.

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 week's 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 the Agency Fees due.

4.4 If an Applicant introduced by Heritage Independent Living Ltd 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 Ltd, 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 Ltd 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 Ltd will make an additional charge of £130 (including VAT) if the assignment includes any day over the period 22<sup>nd</sup> December to 2<sup>nd</sup> January inclusive. 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 Ltd 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 Ltd 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 Ltd will give the Client at least two months' prior written notice.

## **8. LIABILITIES, WARRANTIES AND UNDERTAKINGS**

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 even if such act or omission is negligent or fraudulent.

8.2 Heritage Independent Living Ltd'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 total Agency Fees paid.

- 8.3 Heritage Independent Living Ltd 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.
- 8.4 Heritage Independent Living Ltd 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.
- 8.5 Heritage Independent Living Ltd has a minimum of £1,000,000 Public Liability Insurance, £1,000,000 Professional Indemnity Insurance and £10,000,000 Employers Liability Insurance.
- 8.6 Each party warrants that it has full capacity and authority to agree to and perform under these Terms of Business.

## **9. CONFIDENTIALITY**

- 9.1 All information provided to the Client by Heritage Independent Living Ltd 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 All personal data that Heritage Independent Living Ltd may use will be collected, processed and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Client's rights under the GDPR.
- 10.2 Please refer to Heritage Independent Living Ltd Privacy Notice for Clients (HILPPCL v2) for complete details of Heritage Independent Living Ltd collection, processing, storage, and retention of personal data. This includes, but is not limited to, the purposes for which personal data is used, the legal basis or bases for using it, details of the Client's rights and how to exercise them, and personal data sharing (where applicable).

## **11. 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 twentyfour 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.

**12. ASSIGNMENT AND OTHER DEALINGS**

Heritage Independent Living Ltd 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 Ltd obligations under these Terms of Business

**13. NO PARTNERSHIP OR AGENCY**

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.

**14. ENTIRE AGREEMENT**

14.1 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.

14.2 Nothing in this clause shall limit or exclude any liability for fraud.

**15. 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.

**16. NOTICES**

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

(a) 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).

(b) By email to admin@heritageindependentliving.co.uk

16.2 Any notice shall be deemed to have been received:

(a) 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.

(b) By a return email to the party from admin@heritageindependentliving.co.uk acknowledging receipt of notice given

16.3 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.

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

**17. 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 "HILRF v5.1 - Registration and Fees" or on the date of written acceptance of these Terms of Business.**