

Detailed Introducer Agreement

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- “Applicable Contract” means a contract between the Partner and a particular Prospective Client that has been Introduced by the Introducer for the provision of services and/or products and that has been entered into within the Introduction Time Limit. For the purposes of this Agreement, Applicable Contracts shall be deemed to have been entered into upon the signing thereof by the Partner and the relevant Prospective Client and “formation” shall be interpreted accordingly;
- “Business Day” means, any day (other than a Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom;
- “Commencement Date” means the date on which this Agreement comes into force, as set out in sub-Clause 9.1;
- “Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
- “Introduction” means the provision to the Partner of the contact details of a Prospective Client. This definition applies equally to “Introduce” “Introduced” and “Introducing”;
- “Introduction Date” means the date on which the Introducer first Introduces the Partner to a Prospective Client;
- “Introduction Fees” means the sums payable by the Partner to the Introducer as set out in Clause 5;
- “Introduction Time Limit” means a period of 90 days, beginning on the Introduction Date, within which the Partner and the Prospective Client must establish Applicable Contract;
- “Net Income” means the income received by the Partner from an Applicable Contract after the deduction of value added tax and any and all other relevant taxes;
- “Nightingale” means the online platform hosted by the Introducer that is used to qualify and introduce Prospective Clients;
- “Ongoing Business Relationship Time Limit” means a period of 1 calendar year, beginning on the Introduction Date within which the Partner may enter into an Ongoing Business Relationship with the Prospective Client.
- “Ongoing Business Relationship” means a professional relationship between the Partner and a Prospective Client under which a number of future transactions are reasonably expected to occur. For the purposes of this Agreement, such a relationship shall be deemed to be established upon the entry into the third in a series of Applicable Contracts between the Partner and the same Prospective Client;
- “Prospective Client” means any person or organisation who is not an existing client of the Partner with whom the Partner has had no dealings in the past calendar year. Any and all references to a “Prospective Client” shall include references to employees or officers of such Prospective Client with the sufficient authority to authorise the purchase or procurement of services and/or products from the Partner;
- “Term” means the term of this Agreement as defined in Clause 9; and
- “Territory” means a geographical area the Partner has indicated they trade in.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;

1.2.4 a Schedule is a schedule to this Agreement; and

1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. Appointment of the Introducer

2.1 The Partner hereby appoints the Introducer to identify Prospective Clients within the Territory and Introduce them to the Partner as specified in Clause 3 and in accordance with the remainder of this Agreement.

2.2 The Introducer shall have no authority or capacity whatsoever to bind the Partner in any way or incur any form of liability on the Partner's behalf (including, but not limited to entering into contractual relationships) and shall not hold itself out as having any authority or capacity to do so.

2.3 The Introducer shall not, without the express written agreement of the Partner, have any authority or capacity to enter into any form of negotiations (pre-contractual or otherwise) on the Partner's behalf.

2.4 The Introducer shall not produce any promotional or sales literature (or any similar materials) for the Partner's services and/or products. They shall not use any brands, logos or trade marks (whether registered or otherwise) belonging to the Partner without the Partner's prior written agreement, except where they included in images of the Nightingale platform used for the purposes of promoting Nightingale.

2.5 The Introducer shall, in all dealings with Prospective Clients, ensure that such Prospective Clients are aware that the Introducer is representing the Partner in its capacity as an Introducer and that it does not have any other form of relationship with the Partner.

3. Introductions

3.1 The Introducer shall use reasonable endeavours to identify and pre-qualify Prospective Clients for the Partner beginning on the Commencement Date.

3.2 The Introducer shall Introduce any and all Prospective Clients identified under sub-Clause 3.1 to the Partner by providing full details thereof in writing, such details to include:

3.2.1 The full name of the Prospective Client (including the name of the Introducer's contact if the Prospective Client is not an individual person);

3.2.2 Contact details for the Prospective Client that can include, but not limited to, telephone number(s), email address(es) and postal address;

3.2.3 A description of the Prospective Client including, but not limited to, industry, size, and needs;

3.3 The Introducer shall ensure that it is familiar with the services and/or products supplied by the Partner to the extent reasonably necessary to facilitate the Introduction of Prospective Clients to the Partner. The Introducer shall not make any statements, claims, representations or warranties with respect to the services and/or products supplied by the Partner that are not made by the Partner in its own promotional and sales literature.

3.4 The Introducer reserves the right to request feedback on the Applicable Contract and its subsequent execution, and include such information on Nightingale.

4. Supplier's Obligations

4.1 After an Introduction has been made, the Partner shall use reasonable endeavours to come to an agreement with a Prospective Client with the aim of establishing an Ongoing Business Relationship. In the event that such an agreement is reached, the Partner shall, in good faith, and using all reasonable endeavours, establish at least an applicable contract within the Introduction Time Limit and endeavour to form an Ongoing Business Relationship with the Prospective Client within the Ongoing Business Relationship Time Limit. Notwithstanding the foregoing provisions of this sub-Clause 4.1, nothing shall compel the Partner to enter into any agreement with a Prospective Client that is not in the best interests of the Partner.

4.2 The Partner shall notify the Introducer in writing within 10 Business Days of its entry into an Applicable Contract. The Partner's written notice under this sub-Clause 4.2 shall include the following details:

4.2.1 The date of entry into the Applicable Contract; and

4.2.2 The total net value due to the Partner under the Applicable Contract.

4.3 The Partner shall furnish the Introducer with such information including, but not limited to, promotional and sales literature as may be reasonably required by the Introducer from time to time in order for the Introducer to make Introductions under the terms of this Agreement.

4.4 If the Partner at any time during the Term of this Agreement changes or plans to change the services and/or products with respect to which the Introducer is to seek Prospective Clients, the Partner shall inform the Introducer of such changes as soon as is reasonably possible.

5. Introduction Fees and Payment

5.1 The Introduction Fees payable by the Partner to the Introducer can comprise of the following:

5.1.1 Fee on Introduction

5.1.2 Commission on first Applicable Contract

5.1.3 Commission on second Applicable Contract

5.1.4 Fee on establishing Ongoing Business Relationship

5.2 The specific amounts for the Introduction Fees will be outlined in Nightingale and can vary over time. The rates prevailing at the time of Introduction will be used to calculate amounts for any agreements entered into with the Ongoing Relationship Time Limit.

5.3 Any Introduction Fee, Commission on Applicable Contracts, or Ongoing Relationship Fees that becomes applicable from an Introduction being made under Clause 3 shall become payable within 30 Calendar Days of an invoice being issued by the Introducer.

5.4 The Partner shall pay any and all sums due to the Introducer by bank transfer, to such bank account as the Introducer may from time to time nominate.

5.5 If the Partner fails to pay on the due date any amount which is payable to the Introducer under this Agreement then, without prejudice to any other right or remedy available to the Introducer:

5.5.1 that amount shall bear interest from the due date until payment is made in full at the rate of 8% above the Bank of England base rate from time to time, both before and after any judgment; and

5.5.2 the Introducer shall be entitled to suspend its provision of the Introduction services to the Partner until the outstanding amount has been received by the Introducer in full. The Introducer shall not be deemed to be in breach of its obligations under this Agreement in the event of suspension under this sub-Clause.

5.8 The Partner shall not be required to reimburse the Introducer for any costs incurred by the Introducer in its performance of its obligations under this Agreement unless the Parties agree otherwise in writing.

6. Anti-Bribery Provisions

6.1 Both Parties shall act in good faith with respect to the provisions of this Agreement and shall conduct themselves in accordance with the spirit and anti-bribery provisions of the Bribery Act 2010. Each Party shall ensure proportionate compliance with this Clause 6, taking into account factors including, but not limited to, the size and nature of its business; the markets and territories in which it operates; and the nature of any other parties with which it transacts including, but not limited to, contractors, agents, suppliers, service providers and clients.

6.2 In particular, neither Party shall offer, request, agree to receive or accept anything that may, under the relevant provisions of the Bribery Act 2010, constitute a bribe including, but not limited to, financial incentives and disproportionately lavish hospitality (or promises thereof) designed to induce, reward or constitute improper performance by the Party concerned of its obligations.

6.3 Each Party shall ensure that adequate procedures are in place to prevent any associated persons (as defined by Section 8 of the Bribery Act 2010) from bribing another person with the intention of obtaining or retaining business, or obtaining or retaining an advantage in the conduct of business, for that Party insofar as any actions of such associated persons relate to this Agreement.

7. Confidentiality

7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and 1 calendar year after its termination:

7.1.1 keep confidential all Confidential Information;

7.1.2 not disclose any Confidential Information to any other party;

7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.

7.2 Either Party may:

7.2.1 disclose any Confidential Information to:

7.2.1.1 any sub-contractor or supplier of that Party;

7.2.1.2 any governmental or other authority or regulatory body; or

7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by this Agreement or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms for a period of 1 year after the termination of this Agreement, notwithstanding the termination of this Agreement for any reason.

8. Data Protection

8.1 In this Clause 8:

8.1.1 "Data Protection Legislation" means 1) unless and until GDPR is no longer directly applicable in the UK, GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds GDPR;

8.1.2 "GDPR" means EU Regulation 2016/679 General Data Protection Regulation; and

8.1.3 "personal data" means personal data as defined in the Data Protection Legislation.

8.2 All personal data that either Supplier or the Introducer ("First Party") may use will be collected, processed, and held by that First Party in accordance with the provisions of Data Protection Legislation and the rights under the Data Protection Legislation of the other party being, as the case may be, either the Partner or the Introducer ("Other Party") and the rights under the Data Protection Legislation of any third party.

8.3 For complete details of the First Party's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Other Party's and any third party's rights and how to exercise them, and personal data sharing (where applicable), the Other Party should refer to the Privacy Notice of the First Party.

8.4 All personal data to be shared by the First Party with the Other Party under this Agreement shall be shared in accordance with the terms of the Data Sharing Agreement entered into by the Parties pursuant to this Agreement.

9. Force Majeure

9.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

9.2 In the event that the Introducer cannot perform its obligations hereunder as a result of force majeure for a continuous period of 3 months, the Partner may at its discretion terminate this Agreement by written notice at the end of that period.

9.3 In the event that the Partner cannot perform its obligations hereunder as a result of force majeure for a continuous period of 3 months, the Introducer may at its discretion terminate this Agreement by written notice at the end of that period.

10. Term and Termination

10.1 This Agreement shall come into force when agreed upon using Nightingale and shall continue indefinitely from that date, subject to the provisions of this Clause 10.

10.2 Either Party may terminate this Agreement by giving to the other not less than 7 days written notice.

10.3 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:

10.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 60 Calendar Days of the due date for payment;

10.3.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

10.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

10.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

10.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);

10.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

10.3.7 that other Party ceases, or threatens to cease, to carry on business; or

10.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

10.4 For the purposes of sub-Clause 10.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

10.5 The rights to terminate this Agreement given by this Clause 9 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11. Effects of Termination

Upon the termination of this Agreement for any reason:

11.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;

11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

11.4 subject as provided in this Clause 11 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

11.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

12. No Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

13. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

14. Costs

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

15. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

16. Assignment and Sub-Contracting

16.1 Subject to sub-Clause 16.2, this Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

16.2 The Introducer shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Introducer.

17. Time

17.1 The Parties agree that the times and dates referred to in this Agreement are for guidance only and are not of the essence of this Agreement and may be varied by mutual agreement between the Parties.

18. Relationship of the Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

19. Third Party Rights

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

20. Notices

20.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21. Entire Agreement

21.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this Agreement.

22. Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

24. Dispute Resolution

24.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

24.2 If negotiations under sub-Clause 24.1 do not resolve the matter within 30 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

24.3 If the ADR procedure under sub-Clause 24.2 does not resolve the matter within 30 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

24.4 The seat of the arbitration under sub-Clause 24.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

24.5 Nothing in this Clause 24 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

24.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 24 shall be final and binding on both Parties.

25. Law and Jurisdiction

25.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.2 Subject to the provisions of Clause 24, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.