

Dated

September 2024



Create
TERMS AND CONDITIONS
CREATE A DREAM FOUNDATION
a dream

FOUNDATION

HSR LAW
Solicitors

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THE RESPONSIBLE ADULT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

PARTIES

- (1) You, as the primary carer for the child receiving their dream through Create a Dream Foundation (**Responsible Adult**);
- (2) **CREATE A DREAM FOUNDATION** incorporated and registered in England and Wales with company number 10461950 and charity number 1172133 whose registered office is 57 Wadsworth Drive, Sheffield, South Yorkshire, S12 2DF (**Agent**);
- (3) **The Supplier.**

BACKGROUND

- (A) The Responsible Adult wishes to appoint the Agent as its exclusive agent to arrange a contract between the Supplier and the Responsible Adult to deliver the Dream.
- (B) Subject always to the prior written approval of the Agent the Services will be carried out by the Supplier and paid for, in whole or in part, by the Agent. The Parties all acknowledge that the Responsible Adult has no authority to vary the contract it has with the Supplier without the prior written approval of the Agent, and further that the Agent will not be bound by any variation not made in accordance with this Agreement.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Company	Create a Dream Foundation incorporated and registered in England and Wales with company number 10461950 and charity number 1172133 whose registered office is 57 Wadsworth Drive, Sheffield, South Yorkshire, S12 2DF.
Conditions	these terms and conditions as amended from time to time.
Contract	the contract between the Supplier and the Responsible Adult for the supply of Services in accordance with these Conditions.
Default	has the meaning set out in clause Error! Reference source not found.
Dream	the project to be Delivered by the Supplier to the Responsible Adult for the benefit of the child.

Dream Application Form	the form completed by the Responsible Adult for the request of Services from the Supplier.
Child	a child suffering from serious, terminal or life-threatening illness whose dream the Agent is funding on the terms of this agreement and whose benefit the Responsible Adult is contracting on.
Order	the Responsible Adult's order for Services as set out in the Responsible Adult's purchase order form, as signed by the Responsible Adult and Supplier and countersigned for approval of funding by the Agent.
Services	the services as initially described in the Dream Application Form, to be agreed upon between the Responsible Adult, Supplier and the Agent and recorded in the Order.
Specification	the description or specification of the Services provided in writing by the Supplier to the Responsible Adult.
Supplier	the supplier of the Services as they may be.

1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as it is in force as at the date of this Contract; and
 - (ii) shall include all subordinate legislation made as at the date of this Contract under that legislation or legislative provision.
- (b) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Appointment

- 2.1 The Responsible Adult appoints the Agent as its exclusive agent to procure the Services on behalf of the Responsible Adult on the terms of these Conditions, and the Agents accepts the appointment on these Conditions.
- 2.2 The Responsible Adult authorises the Agent to negotiate and sign or otherwise conclude contracts for the purchase of Services in the name of the Responsible Adult.
- 2.3 The Responsible Adult authorises the Agent to collect and make payment for the supply of the Services.

2.4 The Responsible Adult shall not appoint any other person, firm or company as its agent, distributor, franchisee or other intermediary for the procurement of the Services.

3. Agent's obligations

The Agent undertakes and agrees at all times during the term of the Contract as follows:

- 3.1 The Agent shall act towards the Responsible Adult conscientiously and in good faith.
- 3.2 Except as authorised by the Responsible Adult in these Conditions or otherwise in writing, the Agent shall not act in a way which will incur any liabilities on behalf of the Responsible Adult nor pledge the credit of the Responsible Adult.
- 3.3 The Agent shall complete the attached questionnaire to record the suitability of the Supplier to deliver the Services.
- 3.4 The Agent shall describe itself in all dealings involving the Services as acting as an agent of the Responsible Adult.
- 3.5 The Agent shall inform the Responsible Adult promptly of any Order received.
- 3.6 The Agent shall not take part in any dispute or commence or defend any court or other dispute proceedings on behalf of the Responsible Adult or settle or attempt to settle or make admission concerning any such proceedings.
- 3.7 The Agent shall pay for the Services in whole or in part subject to Clause 4.

4. Cost and Payment

- 4.1 Prior to any quotation being accepted, the Responsible Adult and Agent will agree in writing whether or not the Agent will be responsible for paying for the Services in whole or whether the Responsible Adult will be contributing and if so, how much the contribution will be.
- 4.2 The Agent shall not be liable to pay for any increase in the cost of the Service or extra Services that it has not approved in writing. The Agent has an absolute discretion to refuse to authorise any variation to the original Services, and there shall be no right of appeal by the Responsible Adult or the Supplier.
- 4.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Responsible Adult or Supplier or failure by the Responsible Adult or Supplier to perform any relevant obligation (**Default**)

The Agent shall not be liable for any costs or losses sustained or incurred by the Responsible Adult or Supplier arising directly or

indirectly from the Responsible Adult's and/or Supplier's failure or delay to perform any of its obligations as set out in the Contract.

5. The Responsible Adult's Obligations

The Responsible Adult undertakes and agrees with the Agent at all times during the term of the Contract as follows:

- 5.1 The Responsible Adult shall act in good faith at all times in its relations with the Agent to not bring either party into disrepute.
- 5.2 Provided that the Agent performs its obligations in accordance with these Conditions, the Responsible Adult shall indemnify the Agent against any liabilities which the Agent may incur provided the Agent was acting with reasonable care and skill within the scope of its authority under these Conditions as agent for the Responsible Adult.
- 5.3 The Responsible Adult shall supply the Agent at the Responsible Adult's own expense, any documentation and information regarding the individual and their medical history, and other support that the Agent may from time to time reasonably require for the purposes of procuring the Services and to enable it properly and efficiently to discharge its duties under these Conditions.
- 5.4 The Responsible Adult shall deal promptly and efficiently with any complaint, dispute or post-supply enquiry relating to the ability of the Supplier to deliver the Services that may be raised verbally or in writing by the Supplier.
- 5.5 Where appropriate, the Responsible Adult shall inform the Agent within a reasonable time if it cannot meet its performance obligations under the Contract and the reasons for that non-performance.
- 5.6 Where appropriate, the Responsible Adult shall inform the Agent as soon as reasonably practicable if it wishes to vary the terms of the Contract. No variation to the Contract may be agreed without the Agent's express prior written approval.
- 5.7 The Responsible Adult shall ensure that the terms of the Order and any information it provides in the Specification are complete and accurate.
- 5.8 Where appropriate, the Responsible Adult shall co-operate with the Supplier in all matters relating to the Services and where appropriate, provide to and assist the Supplier with anything they may reasonably require from time to time for the purpose of providing the Services.

6. Compliance

- 6.1 The Responsible Adult and the Supplier shall at their own expense comply with all laws and regulations relating to their activities under these Conditions, as they may change from time to time, and with any conditions binding on them in any applicable licences, registration, permits and approvals.

7. Mandatory Policies

7.1 [data protection, anti-bribery DB check]

8. Limitation of Liability

8.1 Nothing in this agreement shall limit or exclude liability of either the Responsible Adult or Agent for:

- (a) Death or personal injury caused by its negligence.
- (b) Fraud or fraudulent misrepresentation.

8.2 Subject to Clause 8.1 above:

(a) The Agent shall not under any circumstance whatever be liable to the Responsible Adult, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for:

- (i) Any loss of profit, sales, revenue, or business;
- (ii) Loss of anticipated savings;
- (iii) Loss of or damage to goodwill;
- (iv) Loss of agreements or contracts;
- (v) Loss of use or corruption of software, data or information;
- (vi) Any loss arising out of the lawful termination of the Contract;
- (vii) Any loss that is an indirect or secondary consequence of any act or omission of the party in question.

8.3 The Principal shall have the sole responsibility for arranging any and all insurance policies in connection with or as a result of the Contract, and the Agent shall not, under any circumstances whatever, be liable to the Responsible Adult for the lack of any such insurance being arranged or for any insurance policies arranged by the Principal providing unsatisfactory cover.

8.4 Neither the Responsible Adult nor the Agent may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

8.5 Unless the Responsible Adult notifies the Agent that it intends to make a claim in respect of an event within the Notice Period the Agent shall have no liability for that event. The notice period for an event shall start on the day in which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date ("**Notice Period**"). The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9. Basis of contract

9.1 The Responsible Adult contracts with the Supplier to purchase Services in accordance with the Supplier's Terms and Conditions, or any other Conditions as agreed between the Responsible Adult and Supplier, subject to approval by the Agent.

10. Supply of Services

10.1 The Agent shall procure the provision of the Services to the Responsible Adult in accordance with the Specification in all material respects. The Supplier shall supply the Services to the Responsible Adult in accordance with the Specification in all material respects.

11. Termination of agency relationship

11.1 Without affecting any other right or remedy available to it, the Responsible Adult or Agent may terminate the agency relationship with immediate effect by giving written notice to the other party if:

- (a) The other party commits a material breach of their obligations under Clause 3 or Clause 5 and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.

11.2 Upon the termination of the Contract, the agency relationship between the Responsible Adult and Agent will terminate with immediate effect.

12. General

12.1 Force majeure.

Neither the Responsible Adult nor the Agent shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions or the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 months, the party not affected may terminate the agency relationship by giving written notice to the affected party.

12.2 Governing law.

These Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

12.3 Jurisdiction.

Both the Responsible Adult and Agent irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or its subject matter or formation.