

Executor Assist funeral director referral programme

Terms and conditions

1. Appointment of Referrer

- 1.1. Public Trust appoints the Referrer to refer Potential Clients to Public Trust in respect of Public Trust's Executor Assist service, on the terms of this agreement.
- 1.2. Public Trust enters into this agreement on a non-exclusive basis and has the right to enter into similar agreements with other parties without the consent of the Referrer.

2. Commencement

- 2.1. This agreement commences, and is effective, on and from the date written notice is given to the Referrer by Public Trust of Public Trust's acceptance of the Referrer's appointment under this agreement.
- 2.2. Notwithstanding the Referrer's acceptance of this agreement, Public Trust reserves the right to accept or decline a Referrer's application in its sole and absolute discretion.

3. Method of referral

- 3.1. Public Trust will assign a unique referral code to the Referrer upon the commencement of this agreement. Public Trust will provide Referral Vouchers to the Referrer to use in accordance with this agreement. Public Trust may also provide to the Referrer other material in connection with the Referral Vouchers. The Referral Vouchers may be subject to specific terms and conditions (including who may use them and what services they may be used for). Public Trust has the sole discretion to set those terms and conditions.
- 3.2. In order to complete a referral, the Referrer will provide a Referral Voucher containing Public Trust's contact information and a unique referral code to the Potential Client so that the Potential Client can contact Public Trust directly. A Referral Voucher containing a valid unique referral code must be presented to Public Trust by the Potential Client.
- 3.3. The Referrer must date the Referral Voucher as at the date of issue for the Referral Voucher to be valid.
- 3.4. The Referrer will not provide a Potential Client's contact information to Public Trust for the purpose of enabling Public Trust to contact the Potential Client unless the Referrer is authorised by the Potential Client to do so.
- 3.5. Public Trust is under no obligation to accept any application for Executor Assist services which results from a referral by the Referrer.
- 3.6. All Executor Assist services arising out of a referral will be provided solely by Public Trust in its own capacity.

4. Payment of Commission

- 4.1. Subject to clause 4.6, Public Trust agrees to pay the Commission on each Accepted Client by direct credit to the Referrer's nominated New Zealand bank account.
- 4.2. Payment of the Commission shall be made monthly in arrears by the 20th day of the month following.
- 4.3. If Commission is payable to the Referrer in any month, Public Trust will provide the Referrer with a statement containing the number of Accepted Clients referred to Public Trust by the Referrer and the total Commission payable in respect of those Accepted Clients. The statement will be provided to the Referrer by the 20th day of each month following.

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- 4.4. The Referrer will not receive a statement if no Commission is payable during the relevant month. The Referrer may contact Public Trust if it believes that Commission is payable in a particular month, but has not received a statement.
- 4.5. The Referrer agrees that Public Trust will provide a buyer created tax invoice for each month that Commission is payable, and that the Referrer will not issue a tax invoice, credit note or debit note in respect of the Commission.
- 4.6. Commission shall not be paid:
 - 4.6.1. in relation to any Accepted Client where the terms and conditions applicable to the Referral Voucher are not met;
 - 4.6.2. to the extent necessary to ensure compliance by the parties with this agreement;
 - 4.6.3. if the Referrer is in breach of any provisions of this agreement for the duration of that breach; or
 - 4.6.4. if an Accepted Client does not have knowledge of and/or has not consented to the payment of Commission.
- 4.7. Public Trust has sole discretion (acting reasonably) to determine whether Commission is payable in respect of a referral.

5. Term and termination

- 5.1. This agreement will continue until terminated under this clause 5.
- 5.2. Public Trust may terminate this agreement:
 - 5.2.1. on giving 20 working days written notice to the Referrer; or
 - 5.2.2. immediately by notice in writing if the Referrer has breached a material term of this agreement and failed to remedy the breach within 5 working days of being notified to do so or if the breach is not capable of remedy.
- 5.3. The Referrer may terminate this agreement on giving 20 working days written notice to Public Trust.
- 5.4. Upon the termination of this agreement being effective:
 - 5.4.1. the Referrer must cease distributing Referral Vouchers to Potential Clients;
 - 5.4.2. the Referrer must return to Public Trust within 5 working days all remaining Referral Vouchers and any other material Public Trust has provided to the Referrer in connection with the Referral Vouchers; and
 - 5.4.3. Public Trust will continue accepting Referral Vouchers previously distributed to Potential Clients and paying any Commission arising in relation to them until the expiry date of the relevant Referral Voucher.
- 5.5. Following the termination of this agreement, and in addition to any other rights, powers or remedies provided by law:
 - 5.5.1. each party is released from its obligations under this agreement, other than in relation to this clause 5 and clauses 8, 9, 10 and 11 of this agreement; and
 - 5.5.2. each party retains the rights it has against the other party in connection with any breach or claim that has arisen before termination.

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- 5.6. A termination of this agreement under this clause will not affect any other rights the parties have against one another at law or in equity.

6. Undertakings

- 6.1. In performing its obligations under this agreement, each party must:
- 6.1.1. act honestly and fairly;
 - 6.1.2. comply with all, and not breach any, applicable laws (including the Secret Commissions Act 1910); and
 - 6.1.3. ensure that it does not act in a way which is misleading or deceptive including, without limitation, misleading any Potential Clients as to the Referrer's entitlement to the Commission.
- 6.2. The Referrer must comply with any terms of use that apply to any web based portal set up by Public Trust for the purposes of facilitating any of the arrangements under this agreement.
- 6.3. The Referrer must ensure that it follows any instructions from Public Trust in relation to the description of the Executor Assist service and the manner in which the Referrer markets or promotes the Referral Vouchers.
- 6.4. The Referrer must not hold itself out or do any act which would lead another person to believe that it is acting on behalf of Public Trust as an agent, joint venture partner or otherwise.
- 6.5. The Referrer will not do anything which could adversely affect Public Trust's business, interests, reputation or relationships.

7. Relationship of parties

- 7.1. Public Trust and the Referrer are independent contractors and are not agent and principal of each other, joint venture partners and are not acting on behalf of each other. Neither party has the authority to incur any liability on behalf of the other party, or bind to the other party to any contract.

8. Exclusion of Liability

- 8.1. The liability of each party under this agreement is expressly excluded to the fullest extent permitted by law.

9. Tax

- 9.1. All Commission paid is inclusive of GST. The Referrer shall be solely responsible for the payment of all taxes which may be payable in respect of the Commission.
- 9.2. The Referrer warrants that it is GST registered at the time of entering into the agreement and in the event they cease to be GST registered, the Referrer will notify Public Trust immediately.

10. Confidential Information

- 10.1. The Referrer will keep confidential the terms of this agreement and all information concerning Public Trust's business and clients obtained under this agreement, unless Public Trust consents to the disclosure, disclosure is necessary to comply with this agreement, or such disclosure is required by law.
- 10.2. The Referrer may not make any public reference to the subject matter of this agreement or

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use the name of Public Trust unless it has obtained the prior written consent of Public Trust.

11. Notices

- 11.1. Any written notice required to be given under this agreement shall (without limitation) be deemed validly given if posted, delivered by hand, or sent by email to the address notified to the other party by written notice from time to time.

12. Miscellaneous

12.1. Assignment:

12.1.1. Public Trust may assign, delegate or otherwise transfer its rights, duties and obligations under this agreement with 10 working days prior written notice to the Referrer.

12.1.2. This agreement and the rights, duties and obligations of the Referrer owing are personal to the Referrer and may not be assigned, delegated or otherwise transferred by the Referrer without the prior written consent of Public Trust.

- 12.2. *Remedies cumulative:* The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

- 12.3. *Variation:* Public Trust may vary the terms of this agreement from time to time by giving 30 working days' written notice to the Referrer. The variation shall be binding on Public Trust and the Referrer from the effective date of the notice.

- 12.4. *Waiver:* The failure or delay by a party to exercise any power or right under this agreement shall not operate as a waiver by that party of those powers or rights.

- 12.5. *Entire agreement:* The parties acknowledge that this agreement contains the whole agreement between the parties.

- 12.6. *Severability:* the illegality, invalidity or unenforceability of any provision of this agreement will not affect the legality, validity or enforceability of any other provision.

- 12.7. *Governing law:* this agreement will be governed by, and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the jurisdiction of the Courts of New Zealand with respect to any matter arising out of or in connection with this agreement.

13. Definitions

Accepted Client means an Executor Assist client who has been accepted by Public Trust and signed an Executor Assist Engagement Letter.

Commission means the commission paid by Public Trust to the Referrer in respect of an Accepted Client as notified to the Referrer from time to time.

Potential Client means a client who has been referred by the Referrer to Public Trust's Executor Assist service, but has not signed an Executor Assist Engagement Letter.

Referral Voucher means the discount voucher containing a unique referral code that is distributed by Referrers to Potential Clients under this agreement.

Referrer means a funeral director who has agreed to comply with the terms of this agreement in referring Potential Clients to Public Trust's Executor Assist service.

A reference to a *working day* is a reference to a day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.