

TRUSTONTAP – CLIENT TERMS AND CONDITIONS

1 Acceptance of terms and conditions

- 1.1 The Client will be deemed to have accepted and agreed to these Terms and Conditions (which will prevail over any other terms and conditions put forward by the Client), when any of the following events occurs:
- 1.1.1 the Client requests ToT to Introduce an Assistant to themselves or a third party; or
 - 1.1.2 the Client, or a third party acting on the Client's behalf, meets an Assistant in person; or
 - 1.1.3 the Client Engages an Assistant in any capacity; or
 - 1.1.4 an Assistant provides any services to the Client in any capacity; or
 - 1.1.5 ToT provides any of the ToT Service to the Client.

2 Definitions

- 2.1 Words defined below in these terms shall have the meaning given opposite:

Account Holder	any Client, or third party acting on their behalf, who makes one or more Bookings for Assistant Services as confirmed on the Booking Summary; the Account Holder may or may not be the Care Recipient;
Agreement	the Agreement containing these Terms and Conditions;
Assistant	a person registered with ToT who may be Introduced by ToT to the Client to be considered for an Engagement;
Assistant Services	means the services provided by the Assistant on the terms agreed between the Client and the Assistant and confirmed in the Booking;
Booking	a booking confirmed for Assistant Services between an Assistant and a Client (made through the Website or otherwise);
Booking Start Date	the date a booking starts as defined in clause 4.3;
Booking Summary	means a summary of the Booking made through the ToT Service and issued to the Assistant and the Account Holder;
Care Hours	means the number of hours of Assistant Services provided by the Assistant to the Care Recipient with a minimum of one hour per week;
Care Recipient	the person or persons receiving the Assistant Services who may or may not be the Account Holder;
Carer Client Contract	the agreement for Assistant Services entered into between an Assistant and a Client when a Booking is made;
Claims	the meaning given in clause 9.5;

Client	<p>any person, health care professional, Local Authority, social enterprise, voluntary organisation, firm or company who:</p> <p>a) approaches ToT with a view to Engaging an Assistant, or</p> <p>b) to whom an Assistant is Introduced by ToT; or</p> <p>c) is an Account Holder for a Booking.</p> <p>The Client may or may not be the Care Recipient.</p>
Client Admin Fee	the fee for making Introductions for Engagements calculated in accordance with clause 5.1 and 5.3;
Cover Booking	means a Booking confirmed for Assistant Services between an Assistant and a Client, to temporarily replace an Ongoing Engagement with another Assistant; for avoidance of doubt this does not include covering for a carer who is not an Assistant.
Data Protection Legislation	Means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)]; and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.
Direct Engagement	an Engagement by a Client of an Assistant other than through the ToT Service during the term of this Agreement or within 24 months of Termination;
Early Cancellation Fee	for Ongoing Engagements, the fee calculated in accordance with clause 5.5;
Engage(s), Engagement, Engaged, Engaging	the engagement, hire or other use, directly or indirectly and whether under a contract of service or contract for services or otherwise, and/or whether on a permanent, temporary or other basis, of an Assistant by or on behalf of the Client;
Introduction	means the introduction of an Assistant to a Client through the ToT Service, and “ Introduce ”, “ Introduced ” and “ Introducing ” shall be construed accordingly;
Late Payment Fee	means the fee charged for late payment of any invoices as set out in clause 5.11;
Live-In Engagement	An Engagement (Short-term or Ongoing) that requires the Assistant to live at the Client’s property for a period of time on terms agreed between the Parties;
Losses	the meaning given in clause 9.5;
Non Direct Debit Fee	the fee calculated in accordance with clause 5.6;

Ongoing Engagement	an Engagement of an Assistant for Assistant Services continuing for a selected amount of time per week and/or living at the Client's or the Care Recipient's (as appropriate) property on an ongoing basis for more than six weeks;
Opportunity	means the opportunity for the Assistant to be Introduced to a Client with a view to supplying Assistant Services;
Party (or Parties)	ToT and the Client, and 'Party' will mean either one of them;
Personal Care	a regulated activity involving supporting people in their homes with everyday tasks like washing, bathing or cleaning themselves, getting dressed or going to the toilet.
Placement Fee	the fee calculated in accordance with clause 5.7;
Privacy Policy	means the privacy policy adopted by the Company from time to time and found here http://www.trustontap.com/Privacy-Policy ;
Receiving Party	the meaning given in clause 7;
Shared Personal Data	means the personal data and special category data to be shared between the Parties under this Agreement.
Short-Term Engagement	an Engagement of an Assistant for Assistant Services continuing for a selected amount of time per week and/or living at the Client's or the Care Recipient's (as appropriate) property for a specified length of time of less than 6 weeks.
Short-Term Booking Fee	The fee for Short-Term Engagements calculated in accordance with clause 5.4.
Supplying Party	the meaning given in clause 7;
Termination	the termination of this Agreement in accordance with clause 10.1;
ToT	TrustonTap Limited, a company registered in England and Wales under company registration number 08869387, and whose registered office is at Lovegroves Farm, Long Wittenham, Abingdon, Oxfordshire, OX14 4QQ;
ToT Service	services provided by ToT to the Client which include but are not limited to the provision and maintenance of a database of approved Assistants; creating a shortlist of approved Assistants whose services and declared availability match the Client's requirements; approaching these Assistants to confirm their interest in the Opportunity; Introducing the Client and Assistant; providing facilities for communication, Bookings, timesheets, invoicing, secure payments and statements;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
VAT	Means value added tax or any equivalent tax chargeable in the UK;
Vulnerable Person	means a person who needs assistance with day-to-day activities because of their age, illness or disability.
Website	www.trustontap.com ;

3 Services

- 3.1 ToT is classified as an 'introductory agency' (in accordance with guidance produced by the Care Quality Commission) providing a service introducing self-employed carers to Clients. As an introductory agency, ToT has no 'ongoing role' in the direction or control of any Personal Care provided as part of the Assistant Services. ToT is therefore unable to advise or direct changes to how Personal Care is carried out, for example frequency of visits, type of care provided or the way in which the Assistant gives Personal Care; ToT is unable to arrange rotas of Assistants on behalf of Clients; ToT is unable to replace an Assistant unless requested to do so by the Client, or third party acting on their behalf; ToT is unable to make changes to active care plans. ToT does not employ Assistants nor act as an employment business or care agency.
- 3.2 ToT will provide the ToT Service to the Client in consideration for the Client paying the applicable Client Admin Fee and/or Placement Fee to ToT, subject to the terms and conditions of this Agreement.
- 3.3 ToT will use reasonable endeavours to Introduce to the Client an Assistant suitable to carry out the services of such nature as the Client notifies to ToT and/or the Assistant. ToT does not represent, warrant or undertake to find a suitable or any Assistant for each Opportunity notified to it by the Client.
- 3.4 ToT will:
- 3.4.1 ensure that any Assistant has given his or her consent for his or her details to be submitted for any Opportunity for which they are submitted;
 - 3.4.2 once a Booking is in place, provide the Client with the Assistant's contact details that are held by ToT; and also authorise the Client to contact the Assistant directly, and without requiring the prior permission or knowledge of ToT;
 - 3.4.3 give the Client access to copies of:
 - (a) a booked Assistant's relevant qualifications or authorisations; and
 - (b) any non-confidential references for a booked Assistant, in ToT's possession, except where ToT is not permitted to obtain, verify or disclose them; and
 - (c) ensure both Client and Assistant are aware of any legal or professional body requirements for the Assistant to provide Assistant Services;
 - 3.4.4 deliver invoices on behalf of the Assistant based on timesheets submitted by the Assistant.
- 3.5 If another agency submits details of the same Assistant to the Client, if ToT first submitted the details, ToT will be deemed to have Introduced the Assistant to the Client.
- 3.6 By requesting ToT to Introduce Assistants, the Client authorises ToT to present the Opportunity to Assistants, and the Client authorises ToT to share such of the Client's information with the Assistants as is reasonably required to enable the Assistant to assess the Opportunity and their suitability for it, such information may include (but is not limited to) the information sets out in clause 6.2. The Client is not responsible for any advertising, promotional or marketing costs incurred by ToT.

4 Registration, Bookings and TapTeam Hours

- 4.1 Use of the ToT Service shall require the Client, to register with ToT by providing personal information either through the Website or to ToT directly, and to provide sensitive personal information about the Care Recipient. If they themselves are not the Care Recipient, the Client confirms they have the authority to provide sensitive personal information on their behalf. Clause 8 sets out the Parties obligations for data protection.
- 4.2 Each Client can make a Booking by purchasing through the Website or any other means either:

- 4.2.1 a Short-Term Engagement for the rate advertised or advised by the respective Assistant; or
 - 4.2.2 an Ongoing Engagement for the rate advertised or advised by the respective Assistant.
- 4.3 The Booking Start Date is either the date when the Assistant first provided their services, or, in the event no services were provided through no fault of the Assistant, the date of the introductory meeting between the Assistant and the Client. If, having met the Assistant at the introductory meeting, the Client does not wish the Booking to proceed, the Client undertakes to inform TrustonTap in writing.
- 4.4 Upon completing a Booking, the relevant Account Holder and the relevant Assistant shall be issued with a Booking Summary by ToT.
- 4.5 On behalf of an Assistant, ToT will provide a weekly statement in respect of any Engagement which sets out any fees payable by the Client.
- 4.6 The Client understands and acknowledges that ToT is not a party to a Carer Client Contract and shall have no liability under it.

5 Fees and payment

- 5.1 The Account Holder will pay to ToT:
 - 5.1.1 In the event of a Short-Term Engagement or an Ongoing Engagement, a Client Admin Fee calculated in accordance with clause 5.3;
 - 5.1.2 In the event of a Short-Term Engagement, a Short-Term Booking Fee calculated in accordance with clause 5.4;
 - 5.1.3 In the event of cancellation of an Ongoing Engagement by the Account Holder within 6 weeks of the Booking Start Date, unless the Assistant is in material breach of the Carer Client Contract, an Early Cancellation Fee calculated in accordance with clause 5.5;
 - 5.1.4 In the event that the Account Holder chooses not to pay by direct debit, TrustonTap reserves the right to charge a Non Direct Debit Fee calculated in accordance with clause 5.6
- 5.2 In the event of a Direct Engagement the Client, who may or may not be an Account Holder, will pay to ToT a Placement Fee calculated in accordance with clause 5.7.
- 5.3 For all Engagements, the Client Admin Fee payable is calculated as an amount being equal to 5% (+ VAT) of the value of any Booking or such other fee as the Client and ToT may agree.
- 5.4 For Short-Term Engagements, the Short-Term Booking Fee is calculated as an amount being equal to 10% (+ VAT) of the value of any Booking or £15 (+ VAT) per week, whichever is higher, or such other fee as the Client and ToT may agree. For the avoidance of doubt, this fee does not apply to Cover Bookings even if the Cover Booking is for less than six weeks.
- 5.5 The Early Cancellation Fee payable is calculated as an amount being equal to the average weekly value of the Booking including the Client Admin Fee (the average calculated to exclude part weeks and weeks where no Assistant Services were provided) or £100 (+ VAT), whichever is higher, or such other fee as the Client and ToT may agree plus any costs incurred recovering the payment. For the avoidance of doubt, the Early Cancellation Fee is not applied to Short-Term Engagements and will also be waived in the event of the Care Recipient's death.
- 5.6 The Non Direct Debit Fee payable is calculated as an amount being equal to 4% (+ VAT) of the value of any Booking or such other fee as the Client, or a third party acting on their behalf, and ToT may agree.

- 5.7 The Placement Fee payable is calculated as £2,500 + VAT or such other fee as the Client and ToT may agree. The Client also agrees to pay any legal or administrative fees incurred (plus interest as set out in 5.11.1) in recouping this fee.
- 5.8 The payment of any fees will be made by the Client or Account Holder to ToT within 5 days of the date of ToT's invoice unless otherwise specified on the invoice.
- 5.9 The Client Admin Fee charged for the Introduction of any Assistant for an Engagement is applicable for each Engagement.
- 5.10 The Client Admin Fees are for the Introduction of Assistants only and do not include any pay due to any Assistant. In the event the Assistant is not self-employed, it is the Client's responsibility to account for any tax and national insurance contributions attributable to the Assistant.
- 5.11 If the Client or Account Holder does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms and Conditions, then ToT will be entitled:
- 5.11.1 to charge a Late Payment Fee which equates to interest on the outstanding amount at the rate of 3% of the balance due for each month outstanding, accruing daily;
 - 5.11.2 to require the Client to pay, in advance, for any ToT Service (or any part of the ToT Service) which have not yet been performed;
 - 5.11.3 to suspend performance of the ToT Service; and
 - 5.11.4 to reclaim any legal fees incurred in recovering (or attempting to recover) any debt.
- 5.12 When making a payment the Client, or a third party acting on their behalf, will quote relevant reference numbers and the invoice number.
- 5.13 In the event that an agent acting on behalf of a Local Authority and on behalf of a Client, agrees to an Engagement on behalf of a Client whose care is funded by said Local Authority, the agent represents that they have authority to bind the Local Authority as a party to the Carer Client agreement.
- 5.14 In the event of non-payment by a Client receiving funding from a third party, including a Local Authority or agent acting on behalf of a Local Authority, or using a third party to manage their payments, the Client authorises ToT to pursue any debts on their behalf.
- 5.15 Payments received from Clients, or a third party acting on their behalf, by ToT for invoices on behalf of Assistants will be considered deemed receipts, and the Client's liability to the Assistant wholly extinguished.

6 Client's obligations and acknowledgments

- 6.1 The Client acknowledges and agrees that:
- 6.1.1 by requesting ToT to Introduce Assistants for an Opportunity, the Client authorises ToT to promote that Opportunity, subject to the provisions of clause 3.6;
 - 6.1.2 the terms, manner and delivery requirements of any Carer Client Contract, Short-Term Engagement, Ongoing Engagement and/or Care Hours are for the Client and the Assistant to determine and agree; and
 - 6.1.3 any taxation (personal, corporate or otherwise) arising in relation to a Booking or series of Bookings is for the Client and the Assistant to resolve, address and/or pay to HMRC and is not a matter for ToT.
 - 6.1.4 pay ToT for such invoices delivered to them on behalf of the Assistant.
- 6.2 When requesting ToT to Introduce Assistants, the Client will provide to ToT the following information:

- 6.2.1 the Client's full name and address;
 - 6.2.2 the nature of the potential Engagement, including the type of care involved, its location, the desired number of Care Hours, the timing and commencement of any Engagement, the likely duration and details of funding;
 - 6.2.3 the age, mobility and any medical conditions and/or specific care requirements of the Care Recipient, including any behavioural issues that could impact on the Assistant;
 - 6.2.4 any risks to health and safety known to the Client and the steps taken by the Client to prevent or control such risks;
 - 6.2.5 the experience, training, qualifications and any authorisations which are required by the Client, including any qualifications or authorisations required by law or any applicable professional body;
 - 6.2.6 any expenses payable by or to the Assistant;
 - 6.2.7 any specific terms of Engagement for the Assistant; and
 - 6.2.8 details of any care to be provided for or attending to one or more Vulnerable Persons.
- 6.3 The Client will satisfy itself as to the suitability of any Assistant. Whilst ToT will conduct background checks on the Assistant, the Client acknowledges and agrees that it is also the Client's responsibility to:
- 6.3.1 check suitability, experience and any relevant qualifications necessary for the specific requirements of the Client;
 - 6.3.2 ensure, where appropriate, that the Assistant is capable of operating any equipment or machinery to the necessary level;
 - 6.3.3 check any certificate of sponsorship or permit needed to enable the Assistant to work in the United Kingdom; and
 - 6.3.4 ensure that the Assistant satisfies any medical requirements or other qualifications that may be appropriate or required by law.
- 6.4 The Client will notify ToT immediately on the occurrence of the first of the following events:
- 6.4.1 An Assistant provides a Short-Term Engagement or Ongoing Engagement to the Client;
 - 6.4.2 an Assistant accepts a Direct Engagement from the Client; or
 - 6.4.3 the commencement of an Engagement by an Assistant.
- 6.5 ToT does not provide any care plans, care rotas or have any control over the monitoring of Personal Care to the Clients.
- 6.6 By agreeing to Engage or make use of an Assistant in any way, the Client will be liable for the Client Admin Fee and any other applicable fees set out in clause 5.
- 6.7 In this clause 6.7 the definition of Engagement shall apply "*mutatis mutandis*". If the Client effectively introduces any Assistant to any third party and that introduction results in an Engagement of the Assistant by that third party, the Client will:
- 6.7.1 immediately notify the Engagement to ToT; and
 - 6.7.2 pay to ToT the Placement Fee in accordance with clause 5, unless the Engagement occurs more than 24 months after the later of (1) the Introduction of the Assistant to the Client by ToT, or (2) Termination.
- 6.8 The Client:

- 6.8.1 confirms that it is not aware of anything which will cause a detriment to the interests of the Assistant or the Client if it Engages that Assistant; and
 - 6.8.2 will inform ToT immediately if it becomes aware of any circumstances which would render such Engagement detrimental to the interests of the Assistant or the Client.
- 6.9 If the Client is to lend money to the Assistant in order to meet travel or other expenses, the Client will notify ToT and:
- 6.9.1 will provide the terms of such loan to ToT; and
 - 6.9.2 warrants that the repayment terms of such loan will not require the Assistant to repay a greater sum than the sum lent.

7 Confidentiality

- 7.1 All Introductions are confidential. All work undertaken by ToT for the Client in respect of the Introduction of an Assistant to the Client will be for the private and confidential use of the Client only and should not be reproduced in whole or in part or relied upon by third parties for any use whatsoever, without the express written authority of ToT.
- 7.2 Each Party (**'Receiving Party'**) will keep the confidential information of the other Party (**'Supplying Party'**) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the confidential information of the Supplying Party for the purpose and for performing the Receiving Party's obligations under this Agreement.
- 7.3 Receiving Party may disclose the Supplying Party's confidential information:
- 7.3.1 to its employees, officers, representatives, contractors, subcontractors or advisers (and in the case of ToT, the Assistants) who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under or in connection with this Agreement. The Receiving Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 7; and
 - 7.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 7.4 The obligations of this clause 7 will not apply to any information which:
- 7.4.1 was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
 - 7.4.2 is, or becomes, publicly available through no fault of the Receiving Party;
 - 7.4.3 is provided to the Receiving Party without restriction on disclosure by a third party who did not breach any confidentiality obligations by making such a disclosure.
- 7.5 The obligations in this clause 7 will survive Termination of this Agreement for a period of 6 years.

8 Data protection

- 8.1 The Parties shall comply at all times with their respective obligations under the Data Protection Legislation.
- 8.2 ToT:
- 8.2.1 has identified both a lawful basis and condition for processing special category data as set out in ToT's Privacy Policy;
 - 8.2.2 will inform Assistants if it will use the information requested for any purpose that is reasonably to be regarded as unusual;
 - 8.2.3 will, if before an Introduction is made the Client so requests, provide the Client with anonymised details of Assistants, and before providing full details of the Assistants

to the Client, will inform the Assistant of the Client's name and any uses that the Client might make of the information received that is reasonably to be regarded as unusual; and

8.2.4 will, if no request as set out in clause 8.2.3 is made, before providing the Client with full details of the Assistants, inform the Assistant of the Client's name and any uses that the Client might make of the information received that is reasonably to be regarded as unusual.

8.3 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully and shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data

8.4 The Supplying Party shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation

8.5 The Receiving Party undertakes to inform the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation

8.6 The Parties each agree to provide such assistance (at the cost of the other Party) as is reasonably required to enable the other Party to comply with its obligations under the Data Protection Legislation and within the time limits imposed by the Data Protection Legislation.

8.7 Neither Party shall transfer personal data received from the other Party outside the UK.

9 Warranties, liability and indemnities

9.1 The Client accepts and agrees that:

9.1.1 ToT gives no warranty as to the suitability of any Assistant for any Opportunity;

9.1.2 it accepts and will abide by these Terms and Conditions;

9.1.3 the Client is 18 years old or over and have the right to form legally binding contracts under UK law;

9.1.4 the information provided by the Client on the Website is correct and accurate, including any stated care requirements or specific needs;

9.1.5 it is the Client's responsibility to select and enter into a Carer Client Contract with an appropriate Assistant;

9.1.6 the selection of a suitable Assistant is at all times at the Client's discretion;

9.1.7 the Client and/or the Care Recipient (as appropriate) and any person who lives with the them have not ever been the subject of a complaint, restraining order or any other legal action involved with being arrested for, charged with, or convicted of any criminal offence involving violence, abuse, neglect, theft, fraud, dishonesty or any other offence that endangers the safety of others, and are nor have ever been on sex offenders register or similar list; and

9.1.8 ToT provides no advice, warranties or representations in relation to the employment and/or tax status of an Assistant.

9.2 ToT confirms that, in Introducing any Assistant to the Client, it is not aware of anything which will cause any detriment to the interests of that Assistant or the Client if the Client Engages the Assistant except as notified to the Client and that it makes reasonable efforts to check the identity and information provided by Assistants including, but not limited to, conducting checks of:

9.2.1 Passports or driving licences to confirm identity and right to live and work in the UK;

9.2.2 stated qualifications and training certificates where available; and

9.2.3 DBS checks.

9.3 Neither ToT nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the Introduction to or the Engagement by the Client of an Assistant, unless such loss, damage, costs or expenses are the direct result of the negligent acts or omissions of ToT. In particular, but without limiting the generality of the foregoing, ToT will not be liable for any loss, injury, damage, expense or delay arising from or in any way connected with:

9.3.1 any failure of the Assistant to meet the Client's requirements for all or any of the purposes for which the Assistant is required by the Client;

9.3.2 any act or omission of an Assistant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or

9.3.3 any loss, injury, damage, expense or delay suffered by a Client and/or Care Recipient.

Except in the case of death or personal injury caused by ToT's negligence, the liability of ToT under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever will not exceed the Client Admin Fee(s) paid or due to be paid by the Client to ToT under this Agreement.

9.4 Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause 9.4 will not apply to clause 9.5.

9.5 The Client will indemnify and hold harmless ToT from and against all Claims and Losses arising from loss, damage, liability, injury to ToT, its employees and third parties, by reason of or arising out of:

9.5.1 any loss, injury, expense or delay suffered or incurred by an Assistant, however caused, and/or

9.5.2 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of an Assistant, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise,

that arises directly or indirectly out of or in any way connected with arising out of or in any way connected with the Introduction, Engagement or use of an Assistant, the withdrawal by the Client of a vacancy, any information supplied by the Client to ToT or the Client's breach of these Terms and Conditions. "**Claims**" will mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise), and "**Losses**" will mean all losses including, without limitation, financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.6 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

10 Termination

- 10.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on written notice to the other Party:
- 10.1.1 if the other Party is in breach of its obligations under this Agreement and, if the breach is capable of remedy within 14 days, the breach is not remedied within 14 days of the other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
 - 10.1.2 if the other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other Party's assets or business, or if the other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or
 - 10.1.3 if a Party provides 14 days' notice of its intention to terminate this Agreement provided that if any Short-Term Engagement or Ongoing Engagement of an Assistant remains in place at the time notice is given, the Termination will be on the last day of any such Short-Term Engagement or Ongoing Engagement.
- 10.2 On Termination of this Agreement, the Client will pay for the ToT Service provided up to the date of Termination, and for all expenditure falling due for payment after the date of Termination from commitments reasonably and necessarily incurred by ToT for the performance of the ToT Service prior to the date of Termination.

11 Insurance cover

- 11.1 ToT has a £5,000,000 public liability policy (the "**Policy**").
- 11.2 For further details in relation to the Policy or any Claims related to it, please contact support@trustontap.com .

12 Dispute Resolution and Mediation

- 12.1 Each Client will attempt, in good faith, to resolve any dispute or Claims arising out of or in relation to these Terms and Conditions and/or any Carer Client Contract promptly through negotiations between ToT and/or the relevant Assistant.
- 12.2 In the event the dispute is between the Client and an Assistant, and the matter is not resolved through negotiation the Client shall appoint ToT (or any third party nominated by ToT or its insurer) to act as a mediator (and not as an arbitrator) at no cost to the Parties and the Client agrees to co-operate with ToT and assist ToT in good faith including providing ToT with such information and undertake such actions as may be reasonably requested by ToT.

13 Feedback

- 13.1 ToT will ask the Client from time to time to leave feedback on the experience of an Engagement.
- 13.2 The Client acknowledges that the feedback may affect the way in which each Assistant is rated and the Client agrees to:
- 13.2.1 provide feedback honestly; and
 - 13.2.2 not to threaten an Assistant with negative feedback.
- 13.3 The Client agrees that ToT may, for as long as ToT deems desirable, publish anonymised versions of the Client's reviews and/or feedback on the Website.
- 13.4 ToT reserves the right to remove any defamatory, abusive or offensive feedback on the Website at its sole discretion but are not obliged to do so.

14 General

- 14.1 Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 14.2 No amendment or variation of this Agreement will be valid unless confirmed as agreed, in writing, by an authorised signatory of each Party.
- 14.3 Neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party, provided that a Party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business without the other Party's prior written agreement, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.
- 14.4 The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 14.5 No failure or delay by ToT in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 14.6 This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 14.7 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 14.8 No Party will issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.
- 14.9 The validity, construction and performance of this Agreement is be governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
- 14.10 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

15 Interpretation

- 15.1 In this Agreement unless the context otherwise requires:
- 15.1.1 words importing any gender include every gender;
 - 15.1.2 words importing the singular number include the plural number and vice versa;
 - 15.1.3 words importing persons include firms, companies and corporations and vice versa;

- 15.1.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 15.1.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 15.1.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 15.1.7 the headings to the clauses paragraphs of and schedules to this Agreement are not to affect the interpretation;
- 15.1.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 15.1.9 where the word 'including' is used in this Agreement, it will be understood as meaning 'including without limitation'.

If there are any questions about the terms and conditions or the service provided by ToT please contact us at: info@trustontap.com