



01/12/2021

[REDACTED]  
NHS Improvement and NHS England

By email: [REDACTED]

Dear [REDACTED],

National Director for COVID and Flu Vaccinations, NHS Improvement and NHS England

We are delighted to be working with NHS Improvement and NHS England on your National Director for COVID and Flu Vaccinations recruitment and I am now writing to cover the formalities.

### Terms of Business

This contract is being awarded under the Crown Commercial Services Framework - RM6002. The total contract value is £25,000 plus VAT for our full search and selection process. We will invoice this fee in three equal instalments of [REDACTED] plus VAT, at the start, at thirty days and with the final stage only payable upon successful appointment. The payment terms for this piece of work are 30 days, as per the Crown Commercial Services Framework.

We include a placement guarantee of 12 months and we have waived the engagement support costs (normally at 10% of the fee). We will include expenses in our fees unless they are substantial (e.g. international travel) in which case, we will seek prior approval from you before proceeding to book any travel or accommodation. All documentation for the assignment will be shared with you digitally (rather than any printing and couriering).

Our fees exclude the following:

- External advertising charged at cost – minimal costs to be incurred as the search will generate the candidates. We would recommend that external advertisement costs do not exceed [REDACTED]

I have attached our Terms of Business overleaf, which apply in all respects except for the terms outlined in this letter. I have also attached an Assignment Authorisation Form and would be grateful if you could sign and return this to us at your earliest convenience.

We very much look forward to working with you in the months ahead.

Best wishes

[REDACTED]  
Partner and Head of the Healthcare Practice

Odgers Berndtson

[odgersberndtson.com](http://odgersberndtson.com)

# Terms of Business – Executive Search (October 2021)

**Who we are** - We are IRG Advisors LLP and we trade as Odgers Berndtson. We are a limited liability partnership registered in England and Wales with registration number OC354226 and our registered office address and principal place of business is at 20 Cannon Street, London, EC4M 6XD, United Kingdom.

A full list of partners is available for inspection at the registered office. Partner denotes member of the limited liability partnership. IRG Advisors LLP is a member of the global Odgers Berndtson group of companies, the members of which are separate and distinct legal entities.

**Terms** - These terms of business ("Terms") apply between IRG Advisors LLP ("we", "us", "our") and, our client ("you"), unless varied in writing by us; they are deemed to have been accepted immediately upon you being provided with the same and you instructing us to conduct any executive search services. Any terms and conditions that you attempt to assert or apply to our relationship, whether or not in a course of dealings and whether now or at a later date, are expressly rejected by us and we will only provide services on the basis of these Terms and our proposal unless we expressly agree otherwise on writing.

**Standard Fee and Retainer** - Our fee for an executive search is one-third of the first year's compensation package (including, but not limited to, base salary and reasonably anticipated bonus and any company car allowance) for the position which our search relates to, or to which the candidate is subsequently appointed (in either case, "the Fee"). The Fee will be estimated at the outset of the assignment and will act as a retainer ("Retainer"). The Retainer will be divided into three equal instalments and will be invoiced on our receipt of your instruction to proceed, and at 30 and 60 days thereafter. Retainers are non-refundable.

At completion of the assignment, i.e., when a candidate accepts an offer of employment and the actual compensation package has been confirmed, any difference between the Fee and the Retainer will be invoiced.

**Alternative Fee Proposal** - From time to time we will agree with you, in writing, a fee structure which differs from the above ("Alternative Fee Proposal"). Any Alternative Fee Proposal will prevail over any inconsistent provisions of these Terms. An Alternative Fee Proposal proposed by us in writing remains valid for 6 months from the date of such proposal. If not accepted within this timescale the standard Fee and Retainer will apply. Changes in specification and brief - You may ask us to amend the nature of the services we are providing. If you do so we reserve the right to either treat the assignment as cancelled in accordance with the Cancellations provision below or agree a new or additional Fee. No changes will be effective until agreed by us in writing.

**Payment** - Our invoices are subject to VAT and are payable within 14 days of the date of invoice. We reserve the right to charge interest on unpaid invoices at a rate of 4% above the base rate of HSBC Bank plc. We further reserve the right to suspend the provision of our services where any invoice remains unpaid 45 days after its date of issue.

**Additional and Multiple Appointments** - The Fee will be come due and payable each and every time any candidate presented by us accepts an offer from you or any subsidiary, holding or associated company within 12 months of presentation to you by us, regardless of whether the offer is in relation to the position which we originally presented such candidate for. An "associated company" has the meaning given in Section 256 of the Companies Act 2006. A "subsidiary" and "holding company" have the meaning defined by Section 1159 of the Companies Act 2006. For the avoidance of any doubt, if we introduce a candidate who is not successful for a particular role, but is later employed by you or any of your subsidiary, holding or associated companies then a Fee will be due based on the compensation package for that role.

**Internal Candidates/Source of Candidates** - We will include up to three internal candidates as part of a search, with no extra charge. The assessment of further candidates will be charged at an agreed per capita rate. We will treat candidates named or recommended by you in the same manner as any other candidate.

The source of any candidate shall not affect the payment of the Fee. For the avoidance of doubt, even where the candidate is introduced to us by you or by any person associated with you, the Fee remains payable.



**Disbursements** - We will charge you for all out-of-pocket expenses incurred by us including (but not limited to) travel and candidate expenses. These are payable in addition to the Fee and shall either be included with the Retainer and Fee invoices or invoiced separately. We will, where applicable, charge you advertising expenses, including artwork, and typesetting costs at publishers' rate card cost. Advertising charges are payable once the adverts are approved by you.

**Engagement Support Costs** - We charge clients 10% of the Fee for UK assignments and 12.5% of the Fee for international assignments, to cover non-itemised engagement support costs such as on-line database subscriptions, business research and similar items ("Engagement Support Costs"). Engagement Support Costs are payable in addition to the Fee and shall be included on each of our invoices.

**Exclusivity** - In confirming your instruction to proceed, you will be deemed to confirm that no third party (whether an individual, partnership, company or otherwise) has been or shall be instructed or permitted to conduct a search for the position in relation to which you have instructed us. In the event that any third party is or has been so instructed in relation to the same role, this assignment shall be deemed cancelled with immediate effect and the provisions of the Cancellations paragraph below shall apply.

**Candidate checks** - We will only carry out checks in relation to a candidate's higher education qualifications, i.e. degrees and professional bodies memberships. Should any further checks be required, you must notify us of your requirements, in writing, and the Fee may be adjusted. We do not accept any responsibility whatsoever for any inaccuracy in candidates' own CVs.

**Cancellations** - An assignment may be cancelled at any time. If an assignment is cancelled before the 30-day anniversary of our first Retainer invoice, then both the first Retainer invoice and the 30 day Retainer invoice are due and payable by you as a cancellation fee. If an assignment has been cancelled after the 30-day anniversary of the first Retainer invoice and we have presented a shortlist to you then all three Retainers are due and payable as a cancellation fee.

If, however, we have not presented a shortlist and cancellation occurs after the 30-day anniversary of the first Retainer invoice, then no further Retainer invoice will be issued but both the initial Retainer and the 30 day anniversary Retainer will still be payable as a cancellation fee.

If you cancel an assignment because of a restructuring or acquisition of your business or because you are acquiring another entity, or should you decide to be disinclined to continue with the assignment then we reserve the right to charge our Fee in full in accordance with these Terms notwithstanding any Alternative Fee Proposal we may have agreed with you.

Engagement Support Costs will be charged on any Retainer invoice regardless of cancellation.

Disbursements committed and not cancellable, such as (but not limited to) advertising, travel, etc will still be charged regardless of cancellation in addition to the aforementioned cancellation fees. If a disbursement is cancellable, but subject to charge, then you will be charged an amount equal to that disbursement cancellation charge on a passthrough basis.

Any cancellation however caused shall not affect any rights or liabilities which have accrued before the time of cancellation or the continuance in force of any of these Terms which expressly or by implication is intended to come into or continue in force after cancellation.

**Assignments on Hold** - If an assignment is placed "on hold" by you for a period exceeding 90 days either due to lack of meaningful communication from you or following your communication to that effect, it will be treated as cancelled and the appropriate payment will be invoiced under the Cancellations paragraph above. For the avoidance of doubt, if we do not receive any meaningful communication from you in a relation to an assignment for a period of 90 days, then this will be considered "on hold". [In this paragraph "meaningful communication" shall be construed as [communications that proactively engage with us and do not omit or delay to answer questions or progress with the assignment.]

**Data Protection** - For the purposes of this section the "UK Data Protection Legislation" means (a) the UK GDPR; and (b) the Privacy and Electronic Communications Regulations 2003 and the Data Protection Act 2018 and any other legislation applicable in the United Kingdom to the processing of personal data and any amendments made from time to time.

For the purposes of the UK Data Protection Legislation, both parties will be an independent data controller. Accordingly, both we and you are independently responsible for any processing of personal data.

Please note that we use legitimate interests as the legal basis of our processing of personal data. We will only seek consent from data subjects in limited circumstances. You should ensure that any internal candidate whose personal data is provided by you to us is aware that we will process such personal data in accordance with our privacy policy, a copy of which is available at <https://www.odgersberndtson.com/en-gb/privacy-policy>.



We take the processing of personal data very seriously. We will advise you, and you will advise us, at any time there is a data subject access request in connection with the services we are providing to you. Additionally, if either we or you are aware of a data loss event affecting personal data processed in connection with the services that we are providing to you the relevant party will inform the other, as soon as reasonably practical, but in any event within 48 hours of becoming aware of such an event. Each party will provide the other with reasonable co-operation in relation to any data subject access request and/or any investigation into the breach of the UK Data Protection Legislation.

The terms data controller, process, processing, personal data, legitimate interests, consent, and data subject access request are as defined in the UK Data Protection Legislation.

**Confidentiality** - Candidate details provided by us may not be passed to a third party without our prior written consent.

Neither party shall at any time, without the prior written consent of the other party, use or disclose to any other person any information of the other party which is identified as confidential or which is confidential by its nature (including candidate details). Each party shall on demand and on termination of this agreement surrender to the other all materials relating to any confidential information in its possession. Where information is kept in electronic format, it shall be permanently deleted from electronic systems. Notwithstanding the provisions of this clause either party shall be entitled to disclose information and data by reason of:

- a) any statutory or regulatory provision.
- b) any decision of a court or public authority (subject to advance notice, where allowed, to the other party of such decision, and allowing such party to object or appeal such decision).
- c) obligation to regulatory authorities and professional bodies.
- d) to professional advisors on a need-to-know basis.

We also may disclose information to our sub-contractors and affiliates, including Associates, who will be subject to appropriate confidentiality obligations similar to those set out in these Terms. This will be for:

- a) provision of consultancy services to you.
- b) internal reporting and compliance; and
- c) customer relationship management.

You agree that the Terms of this agreement and the fees charged in relation to the same are confidential and may not be disclosed to any third party save for your professional advisors or as required by law.

**Liability** - IRG Advisors LLP, or any associated company, subsidiary and holding company, along with any of their partners, employees, consultants, or members are in no way liable for any act or omission of any candidate. You shall be responsible for making your own appraisal of any candidate's ability, suitability and character.

We aim to provide outstanding service and will take reasonable care in carrying out our work. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement and any liability we may have in connection with our work is limited to the amount of the Fee received by us for that particular piece of work only. We will not be liable to you or any third party (whether in contract, tort or otherwise) for any indirect or consequential loss or for any loss of profit, loss of goodwill, loss of turnover, loss of opportunity, loss of savings, loss or corruption of data or any special loss. We will only accept liability which may arise if the Client has presented a complaint in writing within a maximum of 4 weeks from the cause of the complaint arising. If a complaint is not raised within this 4-week timeframe, then we will have no liability to you in relation to the matter complained of.

Nothing in these Terms shall be construed as excluding or limiting our liability to you for any matter that cannot be excluded by law, such as death or personal injury caused by negligence, fraud, or fraudulent misrepresentation.

We will accept no liability to you in respect of any loss incurred by you or any other party as a result of work undertaken by us based on information provided by you to us, which is inaccurate, incomplete, misleading or delayed. To the extent that we request any actions, materials and/or information from you in order to provide the services, you will provide us with this promptly and without delay.

You will indemnify us for any loss or damage we suffer as a result of third-party claims arising out of in connection with our work.



**Insurance** - We will maintain in force throughout the currency of our agreement with you insurance as follows:

- a) Employers Liability with a maximum liability of [REDACTED]
- b) Public and Product Liability with a maximum liability of [REDACTED]
- c) Professional Indemnity Insurance with a maximum liability of [REDACTED] ) Cyber Liability Insurance with a maximum liability of £ 5m

**Guarantee** - If an appointee leaves you within six months of appointment, providing this is not related to redundancy, change of ownership or a change in responsibilities or reporting lines, we undertake to do the work again, charging for Disbursements and advertising only. This guarantee only applies where you have paid any and all invoices on time in accordance with the Payment clause above.

**Intellectual property** - All intellectual property rights arising at any time in relation to the sourcing and appointment of any candidate whether in relation to pre-existing materials or materials produced for the purpose of such sourcing and appointment or otherwise, shall remain our property and/or vest in us.

You agree that we may use your company name and logo on our website, marketing materials, in other business tenders and proposals to identify you as a client. The provisions of this clause shall survive termination of any services we provide for you.

**Bribery** - We and you shall:

- (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ( Relevant Requirements );
- (ii) not engage in any activity, practice, or conduct which would constitute an offence under sections 1, 2 & 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- (iii) maintain in place throughout the provision of services its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.

**Modern Slavery** - We and you shall:

- (i) comply with the Modern Slavery Act 2015.
- (ii) not engage in any activity, practice, or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (iii) maintain in place throughout the provision of services its own policies and procedures to ensure compliance with the Modern Slavery Act 2015.

**Severance** - If a court or any other competent authority finds that any provision of these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these Terms shall not be affected. If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**Force Majeure** - Neither party shall be responsible for any failure or delay in performance if caused by: an act of war, hostility, or sabotage; epidemic or pandemic; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Both parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either party may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the client's obligation to pay for the services provided.

**Third parties** - A person who is not a party to this Agreement has no rights under the Contract (Rights of Third Parties) Act of 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

**Entire Agreement** - These Terms and the proposal provided by us contain the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of these Terms are found to be invalid or unenforceable, the remaining provisions will remain effective. To the extent that there is any discrepancy between the proposal and these Terms, these Terms shall prevail.



[Law](#) - These Terms, 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 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



PLEASE SIGN AND RETURN ON CLIENT LETTERHEAD

# Assignment Authorisation

I acknowledge receipt of the Company's proposal dated 1st December 2021 and attached Terms of Business. I authorise IRG Advisors LLP, trading as Odgers Berndtson, ("the Company"), to perform the services as set out.

Assignment Job Title: National Director for COVID and Flu Vaccinations

Is a Purchase Order Number required on your Invoices? Yes Yes / No

If 'Yes' please provide the Purchase Order Number: Will provided in due course  
No work will be undertaken until a PO number is supplied

Client Company Registration Number:

Name of Contact to whom invoices should be sent:

Address to send invoices to:

Client Company: NHS England and NHS Improvement

Client Contact:

Client Contact Job Title: Director of HR & ODD

Date: 02 December 2021

Client Signature:

Please return form to: odgersberndtson.com

