

Notes on Use	Professional Fundraiser Agreement (Organisation)
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Notes: These notes are for guidance only and should be read in conjunction with the Agreement. They do not form part of this template Agreement and should be read before it is used.

1. General

This template is for use by a charity making an arrangement with a "Professional Fundraiser" (the "Fundraiser") for it to recruit Organisations as donors to the charity. "Organisation" is confined to any incorporated legal entity or unincorporated association. If you intend the meaning of "Organisation" beyond this, e.g. to include a sole trader, partnership business or other entity, you will need to take legal advice. If you use this template and, if so, how you might need to adapt it (in particular in relation to Data Protection Legislation).

2. Scope of the Agreement and "Professional fundraiser"

The Schedule sets out the scope of the Agreement by a charity. Examples where a fundraising business is engaged by a charity would be regarded under charity law as a "Professional Fundraiser" because it is recruiting donors from them. Other situations might also be regarded as a "Professional fundraiser" under charity law, and if there is any doubt in a particular case, legal advice should be taken.

3. Solicitation of donors

A statement of the charity's policy on the solicitation of donors about the Agreement will be carried out by it. The Schedule gives some examples of the content of such a statement. The examples are only illustrative: the charity may wish to include a statement (either in the Agreement or separately) on the basis of which the Professional Fundraiser will make a statement to donors to be made by the Professional Fundraiser.

4. Fees

The main body of the Agreement will deal with the fees payable by the charity to the Professional Fundraiser. The parties will agree the basis of calculation of fees payable for the fundraising work carried out by the Professional Fundraiser (covering, for example, the costs of the Professional Fundraiser's staff, premises, and other expenses). The template include some basic suggested provisions. The provisions will depend on what is negotiated by the parties. It is important when agreeing a fee amount or formula, and to ensure as far as possible that what it will actually be proportionate to the benefit which the charity will receive from the fundraising work. The basis for calculation of fees payable for fundraising work might be a fixed sum, or daily/hourly rate for the work carried out. There are often elaborate other or additional provisions relating to fees as a proportion of the amount raised).

5. Negotiating the Agreement with the Professional Fundraiser

The charity may wish to put forward its own form of Agreement and the Professional Fundraiser may wish to accept a form of document put forward by the charity. If the charity wishes to use this template as a checklist of points to be covered in the Agreement, it should include in the Professional Fundraiser's own form of Agreement the provisions required by the charity.

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DRAISER AGREEMENT

WEEN:

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f Charity>>

] day of []

THIS PROFESSIONAL FUNDRAISING AGREEMENT is made the [] day of []

BETWEEN:

- (1) <<Name of >> [a company registered in England under number <<C number>> whose registered office is at <<insert Address>>] <<insert >>] (“the Fundraiser”); and
- (2) <<Name of >> [a company registered in England under number <<Company >> whose registered office is at <<insert Address>>] <<insert >>] and a charity [registered as a charity with the Charity Commission for England and Wales under number <<Charity Registration Number>>] [<<insert short form or variant of the full name used>>] (“the Charity”)

WHEREAS:

- (1) The Charity wishes to engage its charitable objects from Organisations as defined below for the carrying out of the fundraising programme of the Charity (“the Programme”) and the Fundraiser has expertise in the provision of fundraising services.
- (2) The Charity and the Fundraiser have agreed that the Fundraiser will undertake the Programme for the Charity and will solely advise or assist the Charity as to how the Programme is carried out.
- (3) The principal purpose of the Programme is for the Fundraiser to Solicit donations of [money][or other property] for the benefit of the Charity by means of the methods set out in the Schedule and the details of the types of donations to be given or applied for and the circumstances in which they are to be given or applied for are set out in the Schedule. No charitable or benevolent body other than the Charity is to be involved in the Programme.
- (4) The Fundraiser is a company registered in England and Wales with the Fundraising Regulator and it] carries on a business carried on for gain and wholly or primarily consisting of soliciting money or other property for charitable, benevolent or other purposes, and therefore. In connection with the Programme and the Fundraiser is a “Professional Fundraiser” as defined in the Fundraising Regulator’s Law.
- (5) This Agreement is made in accordance with Charity Law.
- (6) The Charity is registered with the Charity Commission for England and Wales and the Charity Logo and Charity Name.

1. Definitions

"Agreement"	means this Agreement including its Schedule;
"Charity Law"	means the Charities Act 1992 (as amended by the Charities Act 2006 and the Charities (Protection and Social Investment) Act 2016) and the Charitable Institutions (Fundraising) Regulations 1994 (as amended by the Charitable Institutions (Fundraising) (Amendment) Regulations 2009);
"Charity Logo"	means the logo of the Charity [which is registered as a trademark no. <<insert number>>] [of which the Charity is the registered proprietor] [the Intellectual

	Property rights in which are own the Charity];
“Charity Name”	means the Charity’s name[s];
“Data Protection Legislation”	means all applicable legislation in from time to time in the U Kingdom applicable to data prote and privacy including, but not li to, the retained EU law version of General Data Protection Regu ((EU) 2016/679) (the “UK GDPR it forms part of the law of England Wales, Scotland, and Northern Ir by virtue of section 3 of the Euro Union (Withdrawal) Act 2018; the Protection Act 2018 (and regula made thereunder); and the Privac Electronic Communication Regulations 2003 as amended;
“Expiry Date”	means the end of the Term or if s the date upon which the Progra will terminate in accordance wit terms of this Agreement;
“Fundraising Scheme”	means the Code of Fundra Practice of the Fundraising Regul
“Intellectual Property”	means intellectual property belonging absolutely to any pa which the party is entitled to including any patent, p application, know-how, trade trademark application, regis design, copyright, database rig other similar intellectual or comm right;
“Key Performance Indicators”	means those service standards are detailed in Part 1 of the Sche
“Organisation”	means any legal entity whic established and operates as eith incorporated entity or as a making trust;
“Personal Data”	means “personal data” as defin the Data Protection Legislation;
“Programme”	means the fundraising progra comprising the activity or activiti be carried out by the Fundraiser for Charity as detailed in Part 1 of Schedule and on the terms of Agreement;
“Solicit”	means to solicit in any ma whatever, whether expressly impliedly, and whether by spe directly to a person to whom solicitation is addressed or by m

SAMPLE

	of a written statement;
"Solicitation Statement"	means the solicitation statement requirements of Charity Law applicable to the Fundraiser, namely that the Fundraiser must accompany representations to potential donors with a solicitation statement before a donation is given;
"Term"	means the period of the Programme as described in this Agreement;
"Territory"	means [England & Wales] [the United Kingdom] [<<define other part/s of the UK>>];
"Written Statement"	means a written statement which complies with Charity Law for solicitation statements, the terms of which are agreed between the Charity and the Fundraiser, which clearly indicates: <ul style="list-style-type: none"> (i) the name of the Charity; and (ii) the method by which the Fundraiser's remuneration in connection with the appeal is to be determined; and (iii) the actual amount of that remuneration or sum, if that is known at the time when the statement is made, and if that is not then known, then instead the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.

2. Term of Programme

The Term of the Programme shall be [number] months] subject to the following:

3. Responsibilities

The Fundraiser shall be responsible for the following:

- 3.1 carry out the Fundraising activities [and
- 3.2 at all times exercise the highest degree of care, skill and diligence, and work diligently and regularly to secure the maximum number of donations;
- 3.3 at all times comply with any relevant provisions of Charity Law (including but not limited to the requirements of the relevant regulatory body kept)

from <<date>> [to <<date>>] [for <<number>> months] under the terms of this Agreement.

The Fundraiser shall be responsible for the following covenants with the Charity to:

- (i) carry out the Fundraising activities in the Territory, in accordance with this Agreement and the indicators detailed in Part 1 of the Schedule];
- (ii) at all times exercise the highest degree of care, skill and diligence, and work diligently and regularly to secure the maximum number of donations;
- (iii) at all times comply with any relevant provisions of Charity Law (including but not limited to the requirements of the relevant regulatory body kept)

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- and keep copies of any such books, documents or
make any such copies available for inspection by
- benefit of the Charity the goodwill associated with
[Logo] [and] [other Intellectual Property], and not
[Logo] [or other Intellectual Property], or the
or reputation;
- less written consent carry out any activities as part
de the Territory or other than as prescribed in the
t Solicit any donations of money or other property
edia, telephone, the internet, or direct marketing;
- programme similar to the Programme within the
es] **OR** [the United Kingdom] **OR** [<<define other
ther charity at any time during the Term;
- cal to the activities of the Charity;
- sources to carry out the Programme properly, and
yees, servants, consultants and agents of the
persons for the purpose of raising donations for
ately trained and supervised in relation to the
- ent Requirements applicable to the Fundraiser
donors that donations of money or other property
ential donors are to be given to or applied for the
ompanying such representations with the “Written
and must make the Written Statement to each
s a donation;
- amme, use only such materials as have been
e Charity;
- used by the Fundraiser in connection with the
e] [and] [Logo]. The Charity [Name] [and] [Logo]
nied by the Charity’s charity registration number
es). All artwork bearing the Charity Logo or Charity
s final approval before it is produced;
- ctions and directions given from time to time by
(without limitation) as to how the Charity [Logo]
materials in connection with the carrying out the
- ons of the Fundraising Scheme;
- , in the course of or in connection with the
this Agreement, protect vulnerable people and
from the behaviour referred to below by ensuring
representatives do not have any direct or indirect
people and that the only individuals that it and they
of the public and are instead representatives of
they approach as part of properly carrying out the
it and them only in their capacity as such
- on a person’s privacy;

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- ©Simply-Docs – CO.PFA.0 [REDACTED] ment (Organisations)

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to the Charity;]

prise property other than money, either to the
y (or other officer nominated by the Charity) or in
structions given for the purpose by the Charity
n property held by the Fundraiser until dealt with
n such instructions shall be securely held by it;]

5.1.4 From the Charity at any time(s), provide a detailed
n relation to any monies or other property received
ne benefit of or otherwise falling to be given to or
of the Charity.

5.2 In ret Agre carrying out the Programme in accordance with this
y the following fees to the Fundraiser:

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fixed fee amount>> plus VAT.]

T per <<day/hour>> in respect of work which the
een carried out exclusively on the Programme
t of the fee in excess of £<<insert total amount>>
ritten approval of the Charity obtained before the
nal work.]

5.3 The F an 28 days after the end of the Programme, issue
an in ch is a valid VAT invoice where applicable) for all
and a e due and payable to the Fundraiser in connection
with t

5.4 The C 21 days after receipt of the Fundraiser's invoice
issue 3 above, pay the invoice by cheque made out to
the F eduction or set-off.

5.5 [Sav e 5.6 below] each party shall bear the costs and
expe obligations under this Agreement.

5.6 [The to the Fundraiser those [types of] [specific]
expe Programme which are described in Part 3 of the
Sche ill only be reimbursable against receipts, or other
writte e properly incurred as reasonably required by the
Char

6. Confidential

6.1 Each ertakes to the other party to treat as secret and
confi me, for any reason, to disclose or permit to be
disclo rsons, or to otherwise make use of or permit to be
made relating to the business or other affairs or finances
of the without limitation, information or data comprising,
relati Programme or this Agreement) where knowledge

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7. **Intellectual**
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- 7.2 Whe
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- as received by the first party during the period of
ement; and
- referred to in this clause shall not apply to any
other party which:
- and is at the free disposal of the first party or is
se in the public domain prior to the receipt of such
party; or
- y available on a non-confidential basis through no
or
- with by the first party from a third party, who on
the first party, claims to have no obligations of
r party in respect of it and imposes no obligations
e first party.
- y public announcement or publicity about this
e without the written consent of the other party
law or any competent authority.
- r authorises the Fundraiser to use, the [Charity
other Intellectual Property of the Charity (including
virtue of Sub-clause 7.3), then in consideration of,
draiser agrees and undertakes that:
- property shall at all times be maintained in strict
be used by the Fundraiser as a non-exclusive
ection with and for the reasonable purposes of
amme;
- roperty being a valuable asset of the Charity, it will
e same to any person for any reason or purpose
nsent of the Charity as appropriate or as provided
- any act or thing to be done in derogation of the
nection with its Intellectual Property either during
- ter the Term in any way dispute or impugn the
[Logo] [or] [Name] or other Intellectual Property
ght of the Charity thereto or any person whom the
se the same both during the Term and thereafter;
- n any website a hyperlink to the Charity's website
nsent which may be later revoked, in which case
ocure that the hyperlink is removed within seven
structions to do so; and
- the Term, it shall forthwith discontinue use of the
Name] and any other Intellectual Property of the
directly or indirectly, thereafter operate or do
me or in any manner whatsoever that might tend
mpression that it is in any way associated with the
- s material for the Programme, the Fundraiser will
t all liability, loss, damages, claims, costs and

expenses arising out of any claim in respect of any infringement of any intellectual property rights or other rights of any party whether in the United Kingdom or elsewhere.

7.3

Intellectual Property Rights

7.3.1

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7.4

The Charity shall be responsible for the reasonableness of any other expenses incurred by the Charity in connection with the carrying out of the Programme.

8.

Data Protection

8.1

The Charity and the Fundraiser agree that, in relation to the Programme, for the purposes of the Data Protection Legislation, the Fundraiser is not required to process Personal Data on behalf of the Charity.

8.2

Without prejudice to the effect of Clause 8.1, the Fundraiser will ensure that:

8.2.1

8.2.2

8.2.3

8.2.4

9.

Termination

9.1

If either party terminates this Agreement pursuant to this Agreement for the period of

9.1.1

the Fundraiser shall pay any sum due to the Charity for a period of

the due date for payment or to comply with any other

the Fundraiser pursuant to this Agreement for the period of

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notice of such default shall have been delivered by the Charity's Fundraiser; or

9.1.2 The Charity or the Fundraiser or threatens to cease to carry on business or to enter into any arrangement with, or any conveyance or assignment for the benefit of, its creditors or purports to do so or has a receiver, or administrator appointed over any of its assets or, being an individual, becomes bankrupt or has a petition presented against him or, being a company, passes any resolution to be wound up or has a petition presented against it; or

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9.1.3 The Charity attempts to assign this Agreement and/or the benefits of the Programme without the prior written consent of the Charity or attempts to sell, licence or otherwise dispose of any of the rights or the goodwill annexed thereto or asserts any claim to the reputation or ownership of any of the Charity's rights or

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9.1.4 The Charity's action of the Charity, the Charity's association with the Fundraiser or to damage the Charity's reputation; or

9.1.5 The Charity, as specified in the Schedule ceases to be personally responsible for or deliver the Programme for a material period and to the satisfaction of the Charity;

without limiting the Charity's right to any other remedy, the Charity may terminate this Agreement forthwith upon giving written notice to the Fundraiser; and/or bring such action either at law or in equity as it may deem proper to protect its or their rights

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9.2 In the circumstances in 9.1 the Charity shall be entitled to recover from the Fundraiser any sum relative to the default.

9.3 The Fundraiser shall be bound by the terms and covenants with the Charity that on the Expiry Date shall be required to carry out the Programme and will promptly:

9.3.1 The Fundraiser shall provide the Charity Name] [and] [Charity Logo] [and other] Intellectual Property of the Charity as may be required by the Charity;

9.3.2 The Fundraiser shall provide all originals and copies of all documents and materials containing or covering in any way the [Charity Name] [Charity Logo] [and other] Intellectual Property of the Charity;

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9.4 The Fundraiser shall, on the Expiry Date pay to the Charity without deduction or set-off the sum payable by the Fundraiser under this Agreement.

10. Force Majeure

Neither party shall be liable for any delay in performing any of its obligations under this Agreement in circumstances beyond its reasonable control.

11. Indemnity, Limitation of Liability

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11.1 The Fundraiser shall indemnify the Charity and keep it indemnified and hold it harmless in respect of any claims, demands, losses, damages, costs, actions, proceedings, liabilities or damages of any kind incurred by the Charity or for which it may become liable (including reasonable disbursements paid by it) either as a result of any negligence, act or omission of the Fundraiser, its employees and sub-contractors, in relation to the performance of the Programme.

- to this Agreement and the terms of the Programme.
- 11.2 [The Fundraiser shall maintain at all times in force and effect insurance sufficient to cover any payment that may be made under clause 11.1, insurance against all risks normally associated with the services in the nature of the Programme (including liability insurance) and shall produce the policy and receipt for the same on request.]
- 11.3 [Except in the event of an emergency, the Fundraiser shall not do anything which would expose the Charity to any liability.]
12. **Status of the Fundraiser**
- The Fundraiser shall be an independent contractor, not an employee of the Charity, and the Fundraiser shall not represent itself as agent for or bind the Charity. The parties shall not be joint venturers.
13. **Third parties**
- 13.1 This Agreement is not intended to provide any third party with any rights (other than the rights of Third Parties) Act 1999 or otherwise.
- 13.2 This Agreement shall be for the benefit of and only for the benefit of the parties hereto.
- 13.3 The Fundraiser shall not, without the prior written consent of the Charity:
- 13.3.1 assign or transfer any of its obligations; or
- 13.3.2 purport to assign or transfer any of its rights or obligations.
14. **Notices**
- All notices written in connection with this Agreement may be sent to the other party at the address above or such other address as notice given in writing at <<insert email address>>.
15. **Waiver and estoppel**
- No failure to exercise any right or remedy under this Agreement shall constitute a waiver by either party of any breach or non-performance under any provision of this Agreement shall be deemed to be a waiver of any other provision hereof.
16. **Variation and amendment**
- This Agreement shall supersede all prior discussions, agreements, understandings or representations related to the Programme, all of which shall be excluded. No variation to this Agreement shall be made by any party or on behalf of each of the parties hereto.
17. **Law and Jurisdiction**
- This Agreement shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.

THE FOLLOWING NOTES APPLY TO THIS AGREEMENT ONLY.

PART 1 - The Programme

[A.] The Programme

Note: The charity will provide details of the fundraising programme, covering all features of the programme. The examples are only intended as partial descriptions of typical programmes.

Examples of typical programmes

These are examples of typical programmes. The actual programme may be different but the Fundraiser may still be a "fund-raiser" under Charity Law):

- (i) *A charity engages a Fundraiser to raise a target amount for the charity within a year by approaching corporate donors, appealing to corporate donors etc... The charity agrees to pay the Fundraiser 10% of the amount fund-raiser raises.*
- (ii) *A charity engages a Fundraiser to develop a strategy for raising money for the charity from corporate donors. The Fundraiser implements the strategy. The charity agrees to pay the Fundraiser a fee for the work. In the course of the work the consultant forms part of the charity's fundraising team. The consultant persuades corporate executives with a view to them donating to the charity. (If he does not ask for donations, it is not a fund-raiser.)*

[B.] Key Performance Indicators

The Fundraiser shall ensure that the Programme meets all of the Key Performance Indicators. The Key Performance Indicators comprise the following service standards: <<Set out the Key Performance Indicators required to be met>>.]

PART 2 - The Written Statement

The Written Statement

Note: Whilst the statement should be given in writing by the Fundraiser or his employee to the charity, the statement may be given in any form before any donation is made. The statement may be given in any form used will need to be given in writing by the Fundraiser or his employee to the charity and the Fundraiser shall provide a copy of the statement to the charity. The statement should be given in writing by the Fundraiser or his employee to the charity and the Fundraiser shall provide a copy of the statement to the charity.

The Written Statement should be given in writing by the Fundraiser or his employee to the charity and the Fundraiser shall provide a copy of the statement to the charity.

Examples of Written Statements

1. Where the Fundraiser is remunerated on the basis of a fixed rate for each donor recruited during the campaign

"I am fundraising for the charity of Charity>> for every donor recruited during the course of this campaign. It is estimated that I will be paid <<£>> by the charity."

2. Where the Fundraiser is remunerated on the basis of an hourly rate for work on a yearlong campaign

"I am seeking donations for the charity of Charity>>. In all I expect to have conversations with donors during the course of this campaign. It is estimated that I will be paid <<£X>> by the charity."

3. Where the Fundraiser is remunerated on the basis of a fixed fee for the campaign

"[The person you are working for] [I work for] <<full name of Fundraiser>> and <<full name of Charity>>. This company is being paid <<£X>> by the charity."

The following:

details of the fundraising programme, covering all features of the programme. The examples are only intended as partial descriptions of typical programmes.

The actual programme may be different but the Fundraiser may still be a "fund-raiser" under Charity Law):

Fundraiser to raise a target amount for the charity within a year by approaching corporate donors, appealing to corporate donors etc... The charity agrees to pay the Fundraiser 10% of the amount fund-raiser raises.

The Fundraiser develops a strategy for raising money for the charity from corporate donors. The Fundraiser implements the strategy. The charity agrees to pay the Fundraiser a fee for the work. In the course of the work the consultant forms part of the charity's fundraising team. The consultant persuades corporate executives with a view to them donating to the charity. (If he does not ask for donations, it is not a fund-raiser.)

The Fundraiser shall ensure that it meets all of the Key Performance Indicators. The Key Performance Indicators comprise the following service standards: <<Set out the Key Performance Indicators required to be met>>.]

causes 3.9 and 4.1 refer)

The following:

required to be given in writing by the Fundraiser or his employee to the charity, the statement may be given in any form before any donation is made. The statement may be given in any form used will need to be given in writing by the Fundraiser or his employee to the charity and the Fundraiser shall provide a copy of the statement to the charity. The statement should be given in writing by the Fundraiser or his employee to the charity and the Fundraiser shall provide a copy of the statement to the charity.

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Examples of Written Statements

1. Where the Fundraiser is remunerated on the basis of a fixed rate for each donor recruited during the campaign

"I am fundraising for the charity of Charity>>. I will be paid <<£>> by <<full name of Fundraiser>> during the course of this campaign. It is estimated that I will be paid <<£>> by the charity."

2. Where the Fundraiser is remunerated on the basis of an hourly rate for work on a yearlong campaign

"I am seeking donations for the charity of Charity>>. I am being paid an hourly rate of <<£>> for carrying out this programme of fundraising in England and Wales."

3. Where the Fundraiser is remunerated on the basis of a fixed fee for the campaign

"[The person you are working for] [I work for] <<full name of Fundraiser>> and <<full name of Charity>>. This company is being paid <<£X>> by the charity."

to recruit supporters
was determined in the

4. Where the Fundraiser's remuneration is not fixed in advance

"[The person you are appointing is working on behalf of] [I am raising money for] the benefit of <<full name of Fundraiser>> is being paid <<£X>> to recruit supporters like <<full name of Charity>>. This fee was determined in the following way <<set out method>>."

5. Where the Fundraiser's remuneration is fixed in advance

"[The person you are appointing is working on behalf of] [I am raising money for] the benefit of <<full name of Fundraiser>> is being paid <<£X>> to recruit supporters like <<full name of Charity>>. This fee was determined in the following way <<set out method>>."

[PART 3 – Description of the Programme (Sub-clause 5.6 refers)]

Note: This will only cover the expenses and that of the Fundraiser.

[The following [type in details] Details>>]

[PART 4 – Details of the Programme (Sub-clause 3.16 refers)]

Note: Set out here the details of the Programme and the Performance Indicators.

PART 5 – Name of the Fundraiser

.....
Duly authorised signatory
For and on behalf of <<full name of Fundraiser>>

.....
Duly authorised signatory
For and on behalf of <<full name of Fundraiser>>

ar donations to <<full name of Charity>>. This fee was determined in the following way <<set out method>>."

Where the Fundraiser's remuneration is not fixed in advance (Sub-clause 5.6 refers)

"[The person you are appointing is working on behalf of] [I work for] <<full name of Fundraiser>> which is being paid <<£X>> to recruit supporters like <<full name of Charity>>. This fee was determined in the following way <<set out method>>."

Where the Fundraiser's remuneration is fixed in advance (Sub-clause 5.6 refers)

"[The person you are appointing is working on behalf of] [I am raising money for] the benefit of <<full name of Fundraiser>> is being paid <<£X>> to recruit supporters like <<full name of Charity>>. This fee was determined in the following way <<set out method>>."

Where the Fundraiser's remuneration is not fixed in advance (Sub-clause 5.6 refers)

Note: This will only cover the expenses and that of the Fundraiser.

Details will be reimbursed by the Charity: <<Insert details>>]

Where the Fundraiser's remuneration is fixed in advance (Sub-clause 5.6 refers)

Note: Set out here the details of the Programme and the Performance Indicators, and set out the Key Performance Indicators.

Where the Fundraiser's remuneration is not fixed in advance (Sub-clause 9.1.5 refers)

<<full name of Fundraiser>>

>