Letter of appointment for a non-executive director

About this document

* This is a standard letter of appointment for a non-executive director intended to be entered into between the director and the company to set out the terms and conditions of his role as a non-executive director.
* A non-executive director is not a full or part-time employee of the company or a holder of an executive office. A non-executive director will usually devote part of his time to the affairs of the company as an independent adviser or supervisor.
* Although not an employee, as an “officer holder” for tax purposes, a non-executive director’s fee must be paid via PAYE after deduction of tax and national insurance contributions. Specific advice should be sought if the intention is to remunerate a non-executive director by way of shares or share options.
* The law makes no distinction between an executive and a non-executive director. Both are subject to the same directors’ duties under the Companies Act 2006, although a non-executive director is likely to have to do less than an executive director to discharge the duty of care that is owed to the company.
* In the case of private companies (particularly university spin-outs and venture capital backed start-ups), non-executive directors may be appointed following nomination by specific investor shareholders as their representative on the board. It is important for such directors to remember that they owe their duties and responsibilities as a director to the company ahead of any responsibilities owed to their appointing investor shareholders.

Using this document

* To use this document, you will need to:
  + insert the name and address of the non-executive director and the date on which the letter is sent where indicated at the top of page 1;
  + insert the name of each party where indicated at the end of the letter;
  + insert details of:
  + the date of appointment at paragraph 1.1;
  + the minimum time commitment at paragraph 2.1;
  + the annual non-executive director’s fee at paragraph 4.1; and
  + the company’s directors’ and officers’ liability insurance at paragraph 11.2; and
* consider carefully whether the other items in square brackets are appropriate in the circumstances of a particular appointment.

The letter of appointment should be signed and dated on behalf of the parties where indicated at the end of the letter and will come into force once signed by all parties.

The letter may either be sent once the non-executive director has been formally appointed by the board of directors or prior to formal appointment following the non-executive director's acceptance of the board's offer.

What this document does not include

The non-executive director’s appointment will be subject to the company's articles of association. Remember to review the articles before the letter is drafted, to check whether they include any specific provisions relating to the method of appointment of new directors.

This letter of appointment is a contract for services and not a contract of employment. It is not suitable for use for the appointment of an executive director, who should ordinarily enter into a service contract.

The letter includes only the standard terms needed for the appointment of a non-executive director and may need to be tailored to reflect terms agreed with the particular director being appointed. Some further considerations are as follows:

* consistent with the UK Corporate Governance Code, this letter of appointment provides for an initial term of appointment, subject to re-election and statutory provisions on the removal of directors. It will need to be amended if the non-executive director is to be appointed on a continuous basis;
* if the non-executive director will be providing separate consultancy services to the company, either directly or via a service company, a separate consultancy agreement will need to be entered into;
* a company may wish to include post-termination restrictions in the letter of appointment. However, care must be taken as certain restrictive covenants could be considered, for the purposes of employment law, to be more consistent with an employment relationship and not a contract for services;
* if the director is also to be appointed to the role of chairman, additional provisions outlining duties of the chairman should also be included in the letter of appointment;
* if the non-executive director is expected to serve on any committees of the board of directors (e.g. a remuneration committee) the letter of appointment should outline the non-executive director’s commitment in respect of each committee;
* this letter of appointment does not address data protection. This should be addressed in the company’s data protection policies and procedures. This letter can include provisions referring to these and requiring compliance with them; and
* this letter of appointment does not include any intellectual property provisions. If the non-executive director is likely to contribute to the creation of intellectual property rights, specific provisions should be included to ensure any such rights belong to the Company.

It may be helpful to take specific legal advice before agreeing a letter of appointment for a non-executive director. Please do contact us if you would like to discuss appointing directors.

**[ON HEADED NOTEPAPER OF COMPANY]**

**Private & Confidential**

[Name]

[Address]

[Date]

Dear [     ]

**Letter of Appointment**

As you are aware, the board of directors (“**Board**”) of [COMPANY] (“**Company**”) has agreed to appoint you as a non-executive director of the Company.

This letter sets out the main terms of your appointment. It is agreed between us that this is a contract for services and is not a contract of employment.

By accepting this appointment, you confirm that you are not subject to any restrictions which prevent you from holding office as a director.

1. Appointment
   1. Subject to the remaining provisions of this letter, your appointment shall be for an initial term of [three years] commencing on [DATE] [the date of this letter] unless terminated earlier by either party giving to the other at least [one month’s] prior written notice. The Board may invite you to serve for an additional period.
   2. Your appointment is subject to the articles of association of the Company, as amended from time to time (“**Articles**”). Nothing in this letter shall be taken to exclude or vary the terms of the Articles as they apply to you as a director of the Company. Continuation of your appointment is contingent on your continued satisfactory performance.
   3. Notwithstanding paragraph 1.1 and paragraph 1.2, the Company may terminate your appointment with immediate effect if:
      1. you have committed any serious or repeated breach or non-observance of your obligations to the Company (which include an obligation not to breach your statutory, fiduciary or common-law duties);
      2. you have been guilty of any fraud or dishonesty or acted in any manner which, in the opinion of the Company, brings or is likely to bring you or your office or the Company into disrepute or is materially adverse to the interests of the Company;
      3. you have been declared bankrupt or have made an arrangement with or for the benefit of your creditors, or you have a county court administration order made against you under the County Court Act 1984;
      4. you have been disqualified from acting as a director;
      5. you make or are found to have made any serious misrepresentations to the Company;
      6. you are guilty of gross misconduct, mismanagement or neglect in the performance of any duty owed by you to the Company;
      7. you are convicted of a criminal offence (other than an offence under the Road Traffic Acts) which in the opinion of the Board may bring you or your office or the Company into disrepute;
      8. you are removed as a director of the Company by resolution passed at a general meeting of the Company;
      9. you cease to be a director of the Company pursuant to any provision of the Articles;
      10. you are no longer entitled to be appointed as a director of the Company or you are removed as a director of the Company pursuant to the terms of any shareholders’ agreement relating to the Company; or
      11. you have not complied with the Bribery Act 2010.
   4. On termination of your appointment, you shall only be entitled to accrued fees as at the date of termination together with reimbursement of any expenses properly incurred prior to that date.
   5. The expiry or any termination of your directorship shall not affect any of the provisions of your directorship which are expressed to survive termination.
   6. You shall upon the expiry or termination of your directorship immediately deliver up to the Company all correspondence, documents, papers and property belonging to the Company or any customer or client of the Company which may be in your possession or under your control.
2. Time commitment
   1. Subject to ill health and reasonable holiday absences, overall we anticipate that you will spend a minimum of [NUMBER] days a month on work for the Company [after the induction phase referred to in paragraph 9]. This will include attendance at [monthly] board meetings, the AGM (if held), [one] annual board away day a year and [at least one] site visit a year. In addition, you will be required to consider all relevant papers prior to each meeting. The Board will endeavour to give you reasonable notice of every meeting and of the business which is proposed to be transacted at that meeting.
   2. The nature of the role makes it impossible to be specific about the maximum time commitment. You may be required to devote additional time to the Company in respect of preparation time and ad hoc matters which may arise and particularly when the Company is undergoing a period of increased activity.
   3. By accepting this appointment, you confirm that you are able to allocate sufficient time to meet the expectations of your role. You should obtain the agreement of the [Chief Executive] before accepting additional commitments that might affect the time and attention you are able to devote to your role as a non-executive director of the Company.
3. Role and duties
   1. As a non-executive director you shall have the same general legal responsibilities to the Company as any other director and will, of course, act in such manner as to promote the success, and act in the best interests, of the Company.
   2. All directors must act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole. In doing so, as a director, you must have regard (among other matters) to:
      1. the likely consequences of any decision in the long term;
      2. the interests of the Company’s employees;
      3. the need to foster the Company’s business relationships with suppliers, customers and others;
      4. the impact of the Company’s operations on the community and the environment;
      5. the desirability of the Company maintaining a reputation for high standards of business conduct; and
      6. the need to act fairly as between the members of the Company.
   3. In your role as a non-executive director, you shall also be required to:
      1. constructively challenge and contribute to the development of strategy;
      2. scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
      3. satisfy yourself that financial information is accurate and that financial controls and systems of risk management are robust and defensible;
      4. be responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing senior management and in succession planning;
      5. at all times comply with the Articles and constitution of the Company;
      6. abide by your statutory, fiduciary and common-law duties as a director of the Company;
      7. diligently perform your duties and use your best endeavours to promote, protect, develop and extend the business of the Company;
      8. immediately report your own wrongdoing or the wrongdoing or proposed wrongdoing of any employee or other director of the Company of which you become aware to the [Chief Executive]; and
      9. comply with any code of practice issued by the Company from time to time relating to dealing in the Company’s securities.
   4. You shall be entitled to request all relevant information about the Company’s affairs as is reasonably necessary in order to enable you to discharge your duties.
4. Fees and expenses
   1. You shall be paid an annual fee of £[AMOUNT] which shall be paid in equal instalments monthly in arrears through PAYE after deduction of any taxes and other amounts that are required by law and which shall be subject to an annual review by the Board.
   2. The Company will reimburse you for all reasonable travelling and other out of pocket expenses which you properly incur in performing your duties under your directorship provided that:
      1. before any travel expenses are incurred by you, the payment of these by the Company is first agreed with the Board; and
      2. the Company may require any such expenses to be duly vouched by written evidence where this is reasonable.
   3. Your office as a non-executive director is not pensionable.
5. No employment rights
   1. You are an officer of the Company but not an employee.
   2. You are not entitled to the benefit of any employment rights granted to employees of the Company, nor to participate in any of the Company’s grievance or disciplinary procedures nor any other policies or benefits associated with employees or granted to employees of the Company. You will not at any time or in any circumstances represent yourself or hold yourself out as an employee of the Company.
6. Independent legal advice
   1. In some circumstances you may consider that you need professional advice in the furtherance of your duties as a director and it may be appropriate for you to seek advice from independent advisors at the Company’s expense. A copy of the Board’s agreed procedure under which directors may obtain such independent advice is available upon request. The Company shall reimburse the full cost of expenditure incurred in accordance with its policy.
7. Outside interests
   1. It is accepted and acknowledged that you have business interests other than those of the Company and you have declared any conflicts that are apparent at present. During the period of your directorship we require you not to enter into any business or other relationship with the Company which could materially interfere with the exercise of your independent judgement.
   2. You confirm that you are not retained by a competitor of the Company and that during the continuance of your directorship you will not, without the prior written consent of the Board, accept instructions or do any act which may indirectly or directly give rise to a conflict of interest with your duties, responsibilities or obligations under your directorship with us.
   3. If you become aware of any potential conflicts of interest, these should be disclosed to the [Chief Executive and Company Secretary] as soon as you become aware of them.
8. Confidentiality
   1. All information acquired during your appointment is confidential to the Company and should not be disclosed to third parties or used for any reason other than in the interests of the Company, either during your appointment or after its expiry or termination (by whatever means), without prior clearance from the [Chief Executive].
   2. Nothing in this paragraph 8 shall prevent you from disclosing information which you are entitled to disclose under the Public Interest Disclosure Act 1998, provided that the disclosure is made in accordance with the provisions of that Act.
9. [Induction
   1. After the commencement of the appointment, the Company will ensure that you receive a comprehensive, formal and tailored induction. The Company will arrange for site visits and meetings with senior and middle management and the Company’s auditors. The Company will give the major shareholders the opportunity to meet you.]
10. Review process
    1. The performance of individual directors, the whole Board and its committees is evaluated annually. If, in the interim, there are any matters which cause you concern about your role you should discuss them with the [Chief Executive] as soon as you can.
11. Indemnity and insurance
    1. To the extent permitted by the Companies Act 2006 and the Articles, the Company will indemnify you against all costs, charges, losses and liabilities, which you will incur in the course of the proper performance of your duties during your directorship.
    2. The Company has directors’ and officers’ liability insurance and it intends to maintain such cover for the full term of your appointment. The current indemnity limit is £[AMOUNT]. A copy of the policy document is available from [POSITION].
12. Entire agreement
    1. This letter and any document referred to in it constitutes the entire terms and conditions of your appointment and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and the Company, whether written or oral, relating to its subject matter.
13. Third party rights
    1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this letter. No person other than you and the Company shall have any rights under this letter and the terms of this letter shall not be enforceable by any person other than you and the Company.
14. Notices
    1. All notices which are required to be given under these terms shall be in writing and shall, in the Company’s case, be sent to its registered office from time to time, and in your case be sent to your address as set out in this letter or to such other address in England as you may designate by notice given in accordance with the provisions of this paragraph. Any such notice may be delivered personally or by a first class pre-paid letter or email and shall be deemed to have been served when dispatched.
15. Governing law and jurisdiction
    1. Your appointment with the Company 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 you and the Company irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this appointment or its subject matter or formation (including non-contractual disputes or claims).

Please indicate your acceptance of these terms by signing and returning the attached copy of this letter.

Yours sincerely

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For and on behalf of [Company]

I agree to the above terms of appointment as a non-executive director of the Company.

Signed on [date] by [Name]

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