TERMS OF BUSINESS WITH A HIRER - STANDARD

THE PARTIES

(1) Servoca Nursing and Care Limited (registered company no. 4427633 of Kingston House, Towers Business Park, Wilmslow Road, Manchester, M20 2LD (**"the Employment Business"**).

(2) You are a Hirer or potential Hirer of ours and are the recipient of these Terms of Business to whom the Agency Worker is Introduced. For the avoidance of doubt the Hirer shall also include any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Agency Worker is Introduced.

In accordance with clause 2.1, once the Hirer has received this document, comprising this page and the pages that follow, any act by the Hirer of accepting or requesting services from the Employment Business, or using in any way information from the Employment Business relating to an Agency Worker, is deemed to be and shall constitute the Hirer's acceptance of these Terms of Business. Upon such acceptance, and in consideration of the mutual benefits set out herein, it is agreed as follows:

RECITALS

(A) The Employment Business carries on the business of sourcing and supplying contractors to provide services to clients of the Employment Business. The Hirer has instructed the Employment Business to supply an Agency Worker as specified in the relevant Assignment Details Form.

(B) The Employment Business will Introduce an Agency Worker to the Hirer to provide the Agency Worker's services on the terms and subject to the conditions of this Agreement. These Terms will apply to all dealings between the Employment Business and the Hirer relating to the supply of Agency Workers.

(C) These Terms do not relate to the supply of medical services.

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms the following definitions apply:

"Agency Worker" means (for the purpose of AWR) an individual who is Introduced by the Employment Business to provide services to the Hirer;

"Apprenticeship Levy" means the apprenticeship levy due in accordance with the Finance Act 2017;

"Assignment" means assignment services to be performed by the Agency Worker for the Hirer for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Hirer;

"Assignment Details Form" means written confirmation of the assignment details agreed with the Hirer prior to commencement of the Assignment;

"AWR" means the Agency Workers Regulations 2010;

"AWR Claim" means any complaint or claim to a tribunal or court made by or on behalf of the Agency Worker against the Hirer and/or the Employment Business for any breach of the AWR;

"Business Day" a day (other than Saturday, Sunday or a public holiday) when banks in London are open for business;

"Calendar Week" means (for the purposes of the AWR) any period of seven days starting with the same day as the first day of the First Assignment;

"Charges" means the daily charges of the Employment Business calculated in accordance with clause 6.1 and as may be varied from time to time in accordance with these Terms;

"Comparable Employee" means as defined in the AWR;

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

"Confidential Information" means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Hirer or Employment Business or their business or affairs (including but not limited to these Terms, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, provided to the Agency Worker or any third party in relation to the Assignment by the Hirer or the Employment Business or by a third party on behalf of the Hirer whether before or after the date of these Terms together with any reproductions of such information in any form or medium or any part(s) of such information;

"Control" means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;

"Data Protection Laws" means the Data Protection Act 2018, the General Data Protection Regulation (2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

"Engagement" means the engagement (including the Agency Worker's acceptance of the Hirer's offer), employment or use of the Agency Worker by the Hirer or any third party to whom the Agency Worker has been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Agency Worker is an officer, employee or other representative, an agency, license, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"First Assignment" means:
(a) the relevant Assignment; or

(b) if, prior to the relevant Assignment:

(i) the Agency Worker has worked in any assignment in the same role with the relevant Hirer as the role in which the Agency Worker works in the relevant Assignment; and

(ii) the relevant Qualifying Period commenced in any such assignment,

that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer);

"Hirer's Group" means (a) any individual, company, partnership, statutory body, NHS Trust, public sector body, hospital or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

"Introduction" means whichever occurs later of (i) the passing to the Hirer of a curriculum vitae or information which identifies the Agency Worker or (ii) the Hirer's interview of the Agency Worker and / (in person or by telephone or by any other means), following the Hirer's instruction to the Employment Business to supply a temporary worker; or (iii) the supply of the Agency Worker; and, in any case, which leads to an Engagement of a temporary worker or the Agency Worker; and "Introduce", "Introduced" and "Introducing" shall be construed accordingly;

"Losses" means all losses, liabilities, damages, costs, expenses, fines, penalties or interest whether direct, indirect, special or consequential (including, without limitation,

any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

"NICs Legislation" legislation regarding the deduction and payment of national insurance contributions including in particular the Social Security (Categorisation of Earners) Regulations 1978 and the Social Security (Miscellaneous Amendments No. 2) Regulations 2000;

"Period of Extended Hire" means any additional period that the Hirer wishes the Agency Worker to be supplied, for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;

"Qualifying Period" means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for the relevant Hirer in the same role,

"Relevant Period" means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the first day on which the Agency Worker worked for the Hirer having been supplied by the Employment Business or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

"Relevant Terms and Conditions" means terms and conditions relating to:
(a) pay;
(b) the duration of working time;
(c) night work;
(d) rest periods;
(e) rest breaks; and
(f) annual leave
that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

"Remuneration" includes annualised gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Agency Worker for services provided to or on behalf of the Hirer or any third party. Where a company car is provided a notional amount of £5000 shall be added to the salary in order to calculate the Employment Business' fee.

"Safeguarding Legislation" means the Safeguarding Vulnerable Groups Act 2006;

"Staff Engagement" means the engagement (including the Staff Member's acceptance of the Hirer's offer), employment or use of the Staff Member by the Hirer or any third party to whom the Staff Member has been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, and/or through a company of which the Staff Member is an officer, employee or other representative, an agency, license, franchise or partnership arrangement, or any other engagement; and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"Staff Member" means employees (whether under a contract of employment or otherwise) of the Employment Business;

"Staff Transfer Fee" means the fee payable in accordance with clause 17 of these Terms and Schedule 1;

"Temporary Work Agency" means as defined in the AWR;

"Terms" means these terms of business (including the attached schedule) together with any applicable Assignment Details Form;

"Transfer Fee" means the fee payable in accordance with clause 8 of these Terms, Schedule 1 and Regulation 10 of the Conduct Regulations;

"Vulnerable Person" means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen; and

"WTR" means the Working Time Regulations 1998.

1.2. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

1.4. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of these Terms) and all subordinate legislation made (before or after these Terms) under it from time to time.

2. THE CONTRACT

2.1. These Terms together with the attached Schedule and any applicable Assignment Details Form constitutes the entire agreement between the Employment Business and the Hirer for the supply of Agency Worker's Services by the Employment Business to the Hirer and is deemed to be accepted by the Hirer by virtue of its request for interviews with or Engagement of the Agency Worker, or the passing of any information by the Hirer about an Agency Worker to any third party following an Introduction.

2.2. Unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.

2.3. Subject to clause 6.2, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Employment Business and the Hirer and are set out in writing and a copy of the varied Terms is given to the Hirer stating the date on or after which such varied Terms shall apply.

2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Agency Workers for Assignments with the Hirer.

2.5. The Hirer acknowledges that the Agency Worker carrying out the Assignment have not opted out of the Conduct Regulations and that all of the Conduct Regulations apply to this Agreement.

3. HIRER OBLIGATIONS

3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to the Employment Business details of the position which the Hirer seeks to fill, including the following:

3.1.1. the type of work that the Agency Worker would be required to do;

3.1.2. the location and hours of work;

3.1.3. the experience, training, qualifications and any authorisation which the Hirer considers necessary or which are required by law or any professional body for the Agency Worker to possess in order to work in the position;

3.1.4. any risks to health or safety known to the Hirer and what steps the Hirer has taken to prevent or control such risks;

3.1.5. the date the Hirer requires the Agency Worker to commence the Assignment;

3.1.6. the duration or likely duration of the Assignment.

3.1.7. responses to any additional questions the Employment Business may raise in relation to the position the Hirer seeks to fill.

3.2. The Hirer will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Hirer will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Hirer requires the services of an Agency Worker for more than 48 hours in any week during the course of an Assignment, the Hirer must notify the Employment Business of this requirement before the commencement of the Assignment or at the very latest, where this is not reasonably practicable, before the commencement of the week in which the Hirer requires the Agency Worker to work in excess of 48 hours.

3.3. For the avoidance of doubt, if the Hirer requires or may require an Agency Worker to work on-call, the Hirer and the Employment Business agree that the Agency Worker's working time:

3.3.1. shall include any on-call time where an Agency Worker is required either to be both physically present at the Hirer's premises or at another place as determined by the Hirer and available to carrying out activities or duties for the Hirer;

3.3.2. shall include any time during which the Agency Worker actually carries out activities or duties for the Hirer by virtue of being on-call even though they are not required to be physically present throughout the period of on-call time at the Hirer's premises or at another place as determined by the Hirer; and

3.3.3. shall not include any on-call time during which the Agency Worker is not

required to be physically present at the Hirer's premises or at another place as determined by the Hirer and during which s/he is not carrying out activities or duties for the Hirer as part of the Assignment.

3.4. If the Hirer considers that the activities of any Assignment fall within the exclusions under Regulation 21 (Other special cases) of the Working Time Regulations by virtue of the activities involving the need for continuity of service in relation to services relating to the reception, treatment or care provided by hospitals or similar establishments residential institutions and prisons, the Hirer will comply with and will assist the Employment Business in complying with the corresponding obligations under Regulation 24 (Compensatory rest) of the Working Time Regulations. For the avoidance of doubt, by virtue of Regulation 24 where an Agency Worker is obliged to work during a period which would otherwise be a rest period or rest break by reason of the activities falling within the exclusions under Regulation 21 (described above), the Agency Worker is entitled to be allowed to take an equivalent period of compensatory rest and, in exceptional cases in which it is not possible, for objective reasons, to grant a period of compensatory rest, the Agency Worker shall be afforded such protection as may be appropriate in order to safeguard his/her health and safety.

3.5. The Hirer will comply with its obligations under Regulation 12 (Rights of Agency Workers in relation to access to collective facilities and amenities) and 13 (Rights of Agency Workers in relation to access to employment) of the AWR.

3.6. To enable the Employment Business to comply with its obligations under the AWR, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Employment Business' request:

3.6.1. to inform the Employment Business of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;

3.6.2. if, the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;

3.6.3. to inform the Employment Business if the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:

3.6.3.1. completed two or more assignments with the Hirer;

3.6.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or

3.6.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;

3.6.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:

3.6.4.1. provide the Employment Business with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;

3.6.4.2. inform the Employment Business in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;

3.6.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and

3.6.4.4. inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and

3.6.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.

3.7. In addition, the Hirer will, if so requested by the Employment Business before the commencement of the Assignment, for the purpose of awarding any bonus to which the Agency Worker may be entitled under the AWR:

3.7.1. integrate the Agency Worker into its relevant performance appraisal system;

3.7.2. assess the Agency Worker's performance;

3.7.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and

3.7.4. provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.

3.8. The Hirer will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the AWR.

3.9. The Hirer warrants that:

3.9.1. all information and documentation supplied to the Employment Business in accordance with this clause 3 is complete, accurate and up-to-date; and

3.9.2. it will, either before or during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.6, 3.7 and 3.8.

3.10. Without prejudice to clause 16, the Hirer shall inform the Employment Business in writing of any:

3.10.1. oral or written complaint the Agency Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and

3.10.2 written request for information relating to the Relevant Terms and Conditions that the Hirer receives from the Agency Worker

as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Hirer and the Hirer will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Employment Business with a copy of any such written statement.

3.11. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Agency Worker for the Agency Worker to fill the Assignment.

3.12. The Hirer will allow the Employment Business to suspend the services of the Agency Worker if the Agency Worker wishes to take annual leave and the dates of the annual leave have been agreed with the Hirer in advance or the Agency Worker is absent due to sickness, provided that the Employment Business will notify the Hirer as soon as practicable of any required absence for sickness.

3.13. The Hirer will not integrate the Agency Worker into its workforce or treat the Agency Worker as an employee or do any act or thing towards the Agency Worker which may be regarded as the act of an employer towards an employee save as detailed within these Terms or required by law.

3.14. The Hirer irrevocably authorises the Employment Business to advertise and promote any vacancy or recruitment assignment instructed by the Hirer. The Employment Business may publish advertisements in the Hirer's name or, where appropriate, on a confidential basis, across such advertising channels as the Employment Business considers suitable. The Hirer confirms that it has provided accurate information relating to the vacancy and grants the Employment Business permission to use such information solely for the purpose of advertising, promoting, and recruiting candidates in connection with the assignment.

4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE HIRER

4.1. When Introducing an Agency Worker to the Hirer the Employment Business shall inform the Hirer:

4.1.1. of the identity of the Agency Worker;

4.1.2. that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;

4.1.3. that the Agency Worker is willing to work in the Assignment; and

4.1.4. the Charges.

4.2. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third Business Day following, save where the Agency Worker is Introduced for an Assignment in the same position as one in which the Agency Worker had previously been supplied within the previous 5 Business Days and such information has already been given to the Hirer, unless the Hirer requests that the information be resubmitted.

4.3. If the Hirer has previous knowledge of the Agency Worker the Employment Business is seeking to Introduce the Hirer will notify the Employment Business in writing within 3 Business Days of the identity of the Agency Worker being provided in accordance with clause 4.1.1 and will provide supporting documentary evidence of the previous knowledge. Where such notification is not provided, there will be deemed to be an Introduction and the Charges will be due in accordance with clause 6.

5. TIMESHEETS

5.1. The Hirer agrees to keep a timesheet verifying the amount of time or type of work (as the case may be) worked by the Agency Worker during each week of the Assignment. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of 1 week or less) the Hirer shall sign the timesheet verifying the content. The Hirer will cooperate with the Employment Business in relation to any reasonable requests for information regarding the timesheets.

5.2. Signature of the timesheet by the Hirer is confirmation of the number of days worked or type of work undertaken (as the case may be). If the Hirer is unable to sign a timesheet produced for authentication by the Agency Worker because the Hirer disputes the days or type of work claimed, the Hirer shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what days, if any, or type of work, were worked by the Agency Worker. **Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the Charges in respect of the time or type of work worked.**

5.3. The Hirer shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Agency Worker. In the event that the Hirer is dissatisfied with the Agency Worker the provisions of clauses 12 and 13 below shall apply.

5.4. If there is any dispute about time spent by the Agency Worker, without prejudice to the Employment Business' right to recover additional Charges from the Hirer, the Hirer will produce its own records of the time spent and pay the Charges based on that amount pending resolution of the dispute.

6. CHARGES

6.1. The Hirer agrees to pay the Charges as notified to and agreed with the Hirer. The Charges are calculated according to the time worked by the Agency Worker and comprise the following:

6.1.1. Where the Agency Worker is supplied directly to the Hirer by the Employment Business:

6.1.1.1. the Agency Worker's hourly rate of pay;

6.1.1.2. an amount equal to any paid holiday leave to which the Agency Worker is entitled in connection with the WTR and, where applicable, the AWR and which is accrued during the course of an Assignment;

6.1.1.3. any other amounts to which the Agency Worker is entitled under the AWR, where applicable;

6.1.1.4. employer's National Insurance contributions;

6.1.1.5. any travel, hotel or other expenses as may have been agreed with the Hirer or, if there is no such agreement, such expenses as are reasonable; and

6.1.1.6. the Employment Business' commission, which is calculated as a percentage of the Agency Worker's pay including any bonus payments.

6.2. The Employment Business reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:

6.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, the NICs Legislation; the WTR, Social Security Contributions and Benefits Act 1992, the Apprenticeship Levy; and/or the Pensions Act 2008; and/or

6.2.2. if there is any variation in the Relevant Terms and Conditions.

6.3. Subject to clause 12, the Charges become due upon the Hirer's confirmation that it wishes to use the services of the Agency Worker. The Charges remain due where the Assignment does not take place or the Agency Worker does not provide services during all of the anticipated duration of the Assignment as a result of:

6.3.1. the Agency Worker no longer being required by the Hirer;

6.3.2. closure of the Hirer's premises for any reason;

6.3.3. strike or other industrial action;

6.3.4. after the Qualifying Period is completed, the Agency Worker taking paid time off for ante-natal appointments;

6.3.5. a pregnant Agency Worker being unable to provide services by virtue of a health and safety risk assessment carried out by the Hirer, there being no reasonable adjustments which can be made to the role, and no suitable alternative work with another hirer which can be offered to the Agency Worker by the Employment Business.

The Hirer is required to notify the Employment Business immediately that the services of the Agency Worker are not required for the reasons stated in this clause 6.3 or for any other reason and provide the Employment Business with details of why the services are no longer required.

6.4. Where notice is given to terminate an Assignment in accordance with clause 13 the Charges remain payable during any notice period irrespective of whether the Hirer uses the services of the Agency Worker during the notice period.

6.5. The Charges are invoiced to the Hirer and are payable within 14 days. The initial fee will be due within 14 days of the commencement of the Engagement whether or not an invoice is raised. Variation to these payment terms shall be agreed in writing with the finance department of the Employment Business and the authorised person on behalf of the Client.

6.6. In addition to the Charges, the Hirer will pay the Employment Business an amount equal to any bonus that the Hirer awards to the Agency Worker in accordance with clause 3.7 immediately following any such award and the Employment Business will pay any such bonus to the Agency Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Employment Business' commission on the bonus (calculated using the same percentage rate as that used under clause 6.1.1.6 or, where applicable, such other rate as agreed between the parties) in addition to any bonus payable to the Agency Worker.

6.7. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.6.

6.8. The Employment Business reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per month from the due date until the date of payment.

6.9. The Employment Business will not refund any of the Charges.

6.10. The Hirer's obligations under this clause 6 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.

6.11 Where the Hirer wishes to cancel a shift prior to it commencing, the Hirer shall give the Employment Business 24 hours' notice. Where the Hirer fails to provide less than 4 hours' notice, the Employment Business shall be entitled to charge the Hirer for the shift the cancellation relates to.

7. PAYMENT OF THE AGENCY WORKER

The Employment Business is responsible for paying the Agency Worker and where appropriate for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Agency Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

8. TRANSFER FEES

8.1. The Hirer shall be liable to pay a Transfer Fee upon the commencement of the Engagement if the Hirer Engages an Agency Worker Introduced by the Employment Business other than via the Employment Business or introduces the Agency Worker to a third party and such introduction results in an Engagement of the Agency Worker by the third party other than via the Employment Business and:

8.1.1. where the Agency Worker has been supplied by the Employment Business, such Engagement takes place during the Assignment or within the Relevant Period; or

8.1.2. where the Agency Worker has not been supplied, such Engagement takes place within 6 months from the date of the Introduction to the Hirer.

The Engagement will be deemed to commence on the earlier of the date of an agreement to Engage or the commencement of any services under the Engagement. The Transfer Fee will be calculated in accordance with Schedule 1.

8.2. If the Hirer wishes to Engage the Agency Worker other than via the Employment Business without liability to pay a Transfer Fee, the Hirer may, on giving 12 weeks written notice to the Employment Business, engage the Agency Worker for a Period of Extended Hire as defined in Schedule 1.

8.3. During such Period of Extended Hire the Employment Business shall supply the Agency Worker on the same terms on which s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Employment Business received the notice in clause 8.2; and Hirer shall continue to pay the Charges set out in clause 6.

8.4. If the Employment Business is unable to supply the Agency Worker for any reason outside its control for the whole or any part of the Period of Extended Hire the Hirer shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Hirer during any part of the Period of Extended Hire worked by the Agency Worker before being Engaged by the Hirer.

8.5. If:

8.5.1. the Hirer does not wish to hire the Agency Worker on the same terms as the Assignment; but the Agency Worker is Engaged by the Hirer, or

8.5.2. the Agency Worker requires the payments to them to be increased for any reason and there is a resulting increase to the Charges which is notified to the Hirer;

the Hirer shall either:

8.5.3 provide confirmation that the varied terms are no less favourable than the terms in the proceeding Assignment and the provision of the services will be treated as a period of Extended Hire; or

8.5.4 pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Hirer during any part of the Period of Extended Hire worked by the Agency Worker before being Engaged by the Hirer.

8.6 If the Hirer fails to give notice of its intention to Engage the Agency Worker other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.

8.7 Where prior to the commencement of the Hirer's Engagement other than via the Employment Business the Employment Business and the Hirer agree that such Engagement will be on the basis of a fixed term of less than 12 months, the Employment Business may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 1 pro-rata. Such reduction is subject to the Hirer Engaging the Agency Worker for the agreed fixed term. Should the Hirer extend the Agency Worker Engagement or re-Engage the Agency Worker within 12 months from the commencement of the initial Engagement the Employment Business reserves the right to recover the balance of the Transfer Fee.

8.8 To allow the Employment Business to calculate the Transfer Fee in accordance with Schedule 1, the Hirer will, within 14 Business Days of a written request from the Employment Business, provide the Employment Business with full details of the Remuneration or proposed or projected Remuneration and the terms of the Engagement including details of any renewal or extension or any new Engagement relating to an Agency Worker.

8.9 If the Hirer fails to provide information in accordance with clause 8.8 the Employment Business will calculate the Remuneration based upon the rates payable to the Agency Worker under the last Assignment, or where there has been no Assignment, the highest sum indicated by either the Hirer or the Employment Business as payable for the services sought by the Hirer at the time of the Introduction of the relevant Agency Worker. The Employment Business reserves its right to recover any additional sums where the amount of Remuneration calculated under this clause is less than the actual Remuneration.

8.10 No refund of the Transfer Fee will be paid in the event that the Engagement of the Agency Worker other than via the Employment Business by the Hirer or by a third party to which the Hirer introduces the Agency Worker terminates or terminates before the end of the fixed term referred to in clause 8.7.

8.11 If any party wishes to terminate the Period of Extended Hire, notice should be given in accordance with clause 13.

8.12 VAT is payable in addition to any Transfer Fee due.

9. SUITABILITY CHECKS AND INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

9.1. Where:

9.1.1. the Agency Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of the Agency Worker although the ultimate responsibility for ensuring the Agency Worker is suitable remains with the Hirer; and

9.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer of two references from persons who are not relatives of the Agency Worker and who have agreed that the references they provide may be disclosed to the Hirer although the ultimate responsibility for ensuring the Agency Worker is suitable remains with the Hirer;

and such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment. If the Employment Business has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully it shall inform the Hirer of the steps it has taken to obtain this information in any event. It is the Hirer's ultimate responsibility to ensure that the Agency Worker is suitable.

9.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply an Agency Worker whether during the course of the Assignment, the Agency Worker will be required to work with, care for or attend one or more Vulnerable Persons or engage in regulated activity as defined in the Safeguarding Legislation.

9.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Legislation and to allow the Employment Business to select a suitable Agency Worker for the Assignment.

9.4. In particular in the event that the Hirer removes an Agency Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Disclosure and Baring Service and/or the Safeguarding Legislation, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

10. POLICIES AND PROCEDURES

10.1. The Agency Worker is precluded from assisting any patient s/he assists when working on an Assignment in relation to making a will or codicil or from benefiting under the terms of any will or codicil made by any patient.

10.2. The Hirer will co-operate with the Employment Business in relation to any assessment of the risks at the premises where the Assignment is to be carried out and will provide all relevant information upon request to the Employment Business.

10.3. Where the Agency Worker is supplied to a patient's home, any third party owned equipment in the home shall not be used by the Agency Worker unless the equipment is in a safe condition and the necessary checks have been undertaken by the provider of the equipment.

11. STATEMENT OF PURPOSE AND COMPLAINTS PROCEDURE

11.1. Where the Agency Worker is supplied in Wales or Scotland, the Employment Business' statement of purpose is available on request from the Employment Business.

11.2. Where the Hirer has any cause for concern or wishes to make any complaint about the services provided during the Assignment, the Hirer shall submit such complaints to the Employment Business and such complaints shall be dealt with in accordance with the Employment Business' complaints procedure. A copy of the Employment Business' complaints procedure will be supplied to the Hirer and to anyone who requests a copy of the procedure on behalf of the Hirer.

12. UNSUITABILITY OF THE AGENCY WORKER

12.1. Save as detailed in clause 9 above, it is the responsibility of the Hirer to undertake criminal records checks, to ensure that the Agency Worker has the right to work within the UK, is suitable for the position to be filled, to take up appropriate references, verify the curriculum vitae supplied, interview the Agency Worker and / if appropriate, explain the role required for the Agency Worker, and verify the Agency Worker's ability to carry out the role required to be filled. Save as specified in this Agreement, the Employment Business accepts no liability for any loss arising from the Hirer's failure to verify the suitability of the Agency Worker.

12.2. The Hirer shall ensure that they are satisfied with the Agency Worker's standards of work. It is the Hirer's responsibility to ensure that the Agency Worker is aware of and understands any rules, regulations or procedures relating to the way the Hirer requires the Type of Work to be undertaken and relating to external contractors or other third parties the Agency Worker will come into contact with when undertaking the Type of Work.

12.3. The Hirer undertakes to supervise the Agency Worker sufficiently to ensure the Hirer's satisfaction.

12.4. The Hirer shall notify the Employment Business immediately if they intend to raise concerns about the Agency Worker's performance or conduct with any regulatory body.

12.5. If the Hirer is not satisfied with the Agency Worker for any reason, they should inform the Employment Business immediately in writing giving reasons for the dissatisfaction. If the Hirer reasonably considers that the services of the Agency Worker are unsatisfactory, the Hirer may either instruct the Agency Worker to leave the Assignment immediately, or direct the Employment Business to remove the Agency Worker. The Hirer must allow 2 Business Days for an Assignment of 5 days or more or 1 Business Day for an Assignment of less than 5 days for the Employment Business to find a suitable replacement. If the Employment Business does not provide a suitable replacement the Hirer may terminate the Assignment in accordance with clause 13. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Agency Worker less any payment the Employment Business has agreed to make to the Agency Worker, provided that the Hirer has notified the Employment Business within 2 hours of the Agency Worker commencing the Assignment that they have asked the Agency Worker to leave the Assignment within 2 hours of the Agency Worker commencing the Assignment and provided that notification of the unsuitability of the Agency Worker is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

12.6. The Employment Business shall notify the Hirer immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that:

12.6.1. any Agency Worker supplied to the Hirer is unsuitable for the Assignment;

12.6.2. the Hirer is not meeting its obligations to the Agency Worker;

12.6.3. the Hirer is in breach of the Terms

and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all Charges incurred prior to the termination of the Assignment.

12.7. The Hirer shall notify the Employment Business immediately and without delay and in any event within two hours if the Agency Worker fails to attend work or has notified the Hirer that they are unable to attend work for any reason.

13. TERMINATION OF THE ASSIGNMENT

13.1. Any of the Hirer, the Employment Business or the Agency Worker may terminate an Assignment at any time by giving the other party in writing the period of notice specified in the relevant Assignment Details Form. Where no notice is specified in the relevant Assignment Details Form the Assignment can be terminated without prior notice and without liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 6 above).

13.2. The Terms can be terminated without prior notice and without liability (except in the case of termination by the Hirer, who shall be liable for any Charges due under clause 6 above) in relation to 13.4.3, 13.4.5 and/or 13.4.6.

13.3. Notwithstanding the provisions of clause 13.1 the Hirer may terminate the Assignment with immediate effect by notice in writing to the Employment Business where:

13.3.1. the Agency Worker has acted in breach of any statutory or other reasonable rules and regulations; or

13.3.2. the Agency Worker is in serious or persistent breach of its obligations; or

13.3.3. the Hirer reasonably believes that the Agency Worker has not observed any condition of confidentiality applicable to the Agency Worker from time to time; or

13.4. The Employment Business may terminate an Assignment with immediate effect by notice in writing if:

13.4.1. the Hirer is in serious wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, fails to remedy the breach within 7 days of receiving written notice from the Employment Business to do so; or

13.4.2. the Hirer fails to pay any amount which is due to the Employment Business in full and on the date that the payment falls due; or

13.4.3. the Hirer is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or

13.4.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or

13.4.5. an order is made for the winding up of the Hirer, or where the Hirer passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Agreement); or

13.4.6. (where the Hirer is an individual) the Hirer dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order; or

13.5. the Employment Business knows or suspects that the Hirer has breached the Data Protection Laws'

14. CONFIDENTIALITY AND DATA PROTECTION

14.1. All information relating to an Agency Worker and is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party and the Hirer undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.

14.2. The Employment Business undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to the Employment Business and not to use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Agency Worker or any AWR Claim).

14.3. The Hirer will not discuss with the Agency Worker the terms of the Agency Worker Engagement with the Employment Business, other than as required by law or for the performance of the Assignment.

14.4. Information relating to the Employment Business' business which is capable of being confidential must be kept confidential and not divulged to any third party, except information which is in the public domain.

14.5. The Employment Business will enter into a contract with the Agency Worker which requires the Agency Worker to:

14.5.1 keep confidential and not divulge to any third party information relating to the Hirer's business which is capable of being confidential, except where such information is in the public domain;

14.5.2 on completion of the Assignment or at any time when requested by the Hirer or the Employment Business, return to the Hirer or where appropriate, to the Employment Business, any Hirer property or items provided to the Agency Worker in connection with or for the purpose of the Assignment.

15. INTELLECTUAL PROPERTY RIGHTS

All copyright, trademarks, patents and other intellectual property rights deriving from the Assignment shall belong to the Hirer, Accordingly the Employment Business shall use its reasonable endeavours to ensure that the Agency Worker shall) execute all such documents and do all such acts in order to give effect to the Hirer's rights pursuant to this clause.

16. LIABILITY

16.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Hirer by ensuring reasonable standards of skill, integrity and reliability from the Agency Worker and to provide the same in accordance with the Assignment details as provided by the Hirer, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Agency Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Agency Worker or if the Agency Worker terminates the Assignment for any reason. For the avoidance of doubt, this clause includes but is not limited to any clinical or medical malpractice on the part of the Agency Worker but the Employment Business does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

16.2. Agency Workers supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business. The Hirer agrees to be responsible for all acts, errors or omissions of the Agency Worker, whether wilful, negligent or otherwise as though the Agency Worker was on the payroll of the Hirer.

16.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment business is required to inform the Agency Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Agency Worker is to fill the Assignment. The Hirer will comply in all respects with all relevant statues, by-laws, codes of practice and legal requirements.

16.4. The Hirer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the WTR, the Data Protection Laws, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 (as amended), Equality Act 2010 (as amended), by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Agency Worker during all Assignments.

16.5. The Hirer undertakes not to request the supply of an Agency Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Hirer to perform the duties of a person on strike or taking official industrial action.

16.6. The Hirer shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent (and/or supporting or consequential secondary legislation relating thereto) or the NICs legislation arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, this Agreement by the Hirer.

16.7. The Hirer shall indemnify and keep the indemnified the Employment Business against any Losses incurred by the Employment Business by reason of any proceedings, claims or demands by the, the Agency Worker or any third party arising out of any non-compliance with, and/or result of, any breach of the Data Protection Laws by the Hirer

16.8. The Hirer shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Hirer as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.

16.9. If the Agency Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

16.10. Without prejudice to the other provisions of this clause 16, the Employment Business's total liability arising under or in connection with this Agreement or in relation to the supply of the Agency Worker or the Assignment, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to direct damages not exceeding the Charges payable for 3 months under the relevant Assignment.

17. NON SOLICITATION

17.1 The Hirer shall procure that it shall not, (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the Employment Business any person employed or engaged by the Employment Business (such person being a Staff Member and not an Agency Worker) at any time during the Term or for a further period of 12 months after the termination of this Agreement or last communication had with the member of staff (whichever is the latter). In the event of Hirer directly engages the Staff Member within 12 months of termination or communication, the Hirer will be liable for Staff Transfer Fee.

18. NOTICES

All notices which are required to be given in accordance with these Terms shall be in writing and may be delivered personally or by first class prepaid post to the registered office of the party upon whom the notice is to be served or any other address that the party has notified the other party in writing, by email or facsimile transmission. Any such notice shall be deemed to have been served: if by hand when delivered, if by first class post 48 hours following posting and if by email or facsimile transmission, when that email or facsimile is sent.

19. SEVERABILITY

If any of the provisions of these Terms shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining Terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

20. RIGHTS OF THIRD PARTIES

None of the provisions of this Agreement is intended to be for the benefit of or enforceable by third parties and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

21. GOVERNING LAW AND JURISDICTION

These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

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Signed for and on behalf of the Hirer

[print name here]

I confirm I am authorised to sign these Terms for and on behalf of the Hirer.

Date

Signed for and on behalf of the Employment Business

[print name here]

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SCHEDULE 1: TRANSFER FEES

1. Transfer Fee for Agency Workers

1.1 (a) The Transfer Fee referred to in clause 8 shall be calculated as follows: 20% of the Remuneration payable to the Agency Worker during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the proposed or projected Remuneration.

1.2 (b) The Period of Extended Hire, referred to in clause 8, before the Hirer Engages an Agency Worker shall be: 20 weeks.

2. Transfer Fee for Staff Members

2.1 The Hirer shall be liable to pay the Employment Business a fee ("Staff Transfer Fee") where the Hirer approaches a Staff Member (not an Agency Worker) of the Employment Business and such approach results in a Staff Engagement (either on a temporary or permanent basis) of the Staff Member:

2.1.1 the Hirer directly Engages the Staff Member other than through the Employment Business within 12 months of last communication with the Staff Member. Such communication includes phone, email and/or meeting in person.

2.1.2 the Hirer introduces the Staff Member to a third party (including any member of the Client's Group or subsidiaries), and such introduction results in an engagement of the Staff Member by the third party within 12 months of last communication with the Staff Member.

2.2 The Employment Business will calculate the Staff Transfer Fee at 25% of the Remuneration payable to the Staff Member. Where the amount of the Remuneration payable to the Staff Member is not known, the Transfer Fee will be calculated by current market rates for the role the Staff Member is performing for the Hirer or third party.

2.3 The Employment Business will not refund the Transfer Fee if the engagement subsequently terminates.

2.4 VAT is payable in addition to any Staff Transfer Fee due.

2.5 The Staff Transfer Fee is not applicable to the Agency Worker. Please see definition Transfer Fee and paragraph 1 above for Agency Workers Transfer Fees.