

**Contract for Supply of Nursing Services**

**THE PARTIES**

- (1) Agenda Recruitment Limited (registered company no. 4642343) of 18 Watermark Way, Foxholes Business Park, Hertford, Herts, SG13 7TZ (**“the Employment Business”**)
- (2) «Client\_Name»(“the Client”)

**RECITALS**

- (A) The Employment Business carries on the business of an Employment Business as defined in s13.3 of the Employment Agencies Act 1973, when carrying on the business of introducing and supplying nursing staff to the Client to work on Assignment pursuant to these terms.

**1. DEFINITIONS AND INTERPRETATION**

1.1. In these Terms the following definitions apply:

<b>“Agency Workers Regulations”</b>	means the Agency Workers Regulations 2010;
<b>“Assignment”</b>	means assignment services to be performed by the Nurse for the Client for a period of time during which the Nurse is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Client;
<b>“Assignment Details Form”</b>	means written confirmation of the assignment details agreed with the Client prior to commencement of the Assignment;
<b>“AWR Claim”</b>	means any complaint or claim to a tribunal or court made by or on behalf of the Nurse against the Client and/or the Employment Business for any breach of the Agency Workers Regulations;
<b>“Calendar Week”</b>	means any period of seven days starting with the same day as the first day of the First Assignment;
<b>“Charges”</b>	means the hourly 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;
<b>“Comparable Employee”</b>	means as defined in Schedule 1 to these Terms;
<b>“Conduct Regulations”</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
<b>“Confidential Information”</b>	means any and all confidential commercial, financial, marketing, and technical or other Information or data of whatever nature relating to the Client 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 Nurse or any third party in relation to the Assignment by the Client or the Employment Business or by a third party on behalf of the Client 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;

<b>“Control”</b>	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;
<b>“Data Protection Laws”</b>	means the Data Protection Act 1998, any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
<b>“Engagement”</b>	means the engagement, employment or use of the Nurse by the Client or any third party to whom the Nurse has been introduced by the Client, 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 Nurse 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;
<b>“First Assignment”</b>	means: <ul style="list-style-type: none"> <li>(a) the relevant Assignment; or</li> <li>(b) if, prior to the relevant Assignment: <ul style="list-style-type: none"> <li>(i) the Nurse has worked in any assignment in the same role with the relevant Client as the role in which the Nurse works in the relevant Assignment; and</li> <li>(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 Nurse is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);</li> </ul> </li> </ul>
<b>“Client”</b>	means the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body (as the case may be) to whom the Nurse is introduced;
<b>“Client's Group”</b>	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, 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 Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
<b>“Introduction”</b>	means (i) the passing to the Client of a curriculum vitae or information which identifies the Nurse; or (ii) the Client's interview of the Nurse (in person or by telephone or by any other means), following the Client's instruction to the Employment Business to supply a nurse; or (iii) the supply of the Nurse; and, in any case, which leads to an Engagement of the nurse or the Nurse; and “Introduced” and “Introducing” shall be construed accordingly;

<b>“Losses”</b>	means all losses, liabilities, damages, costs, expenses 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;
<b>“Nurse”</b>	means the nurse, midwife or health visitor, currently registered with the Nursing and Midwifery Council, who is introduced by the Employment Business to provide services to the Client;
<b>“Off-Payroll”</b>	<i>means Chapter 10, Part 2, and Income Tax (Earnings and Pensions) Act 2003</i>
<b>“Period of Extended Hire”</b>	means any additional period that the Client wishes the Nurse to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;
<b>“PSC Intermediary”</b>	<i>means the Nurse’s personal services company;</i>
<b>“Qualifying Period”</b>	means 12 continuous Calendar Weeks during the whole or part of which the Nurse is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role, and as further defined in Schedule 1 to these Terms;
<b>“Relevant Period”</b>	means (a) the period of 8 weeks commencing on the day after the <u>last</u> day on which the Nurse worked for the Client having been supplied by the Employment Business; or (b) the period of 14 weeks commencing on the <u>first</u> day on which the Nurse worked for the Client 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;
<b>“Relevant Terms and Conditions”</b>	means terms and conditions relating to: <ul style="list-style-type: none"> <li>(a) pay;</li> <li>(b) the duration of working time;</li> <li>(c) night work;</li> <li>(d) rest periods;</li> <li>(e) rest breaks; and</li> <li>(f) annual leave</li> </ul> That are ordinarily included in the contracts of employees or workers (as appropriate) of the Client 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;
<b>“Remuneration”</b>	includes 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 Nurse for services provided to or on behalf of the Client or any third party. Where a company car is provided, a notional amount will be added to the salary in order to calculate the Employment Business' fee;
<b>“Terms”</b>	means these terms of business (including the attached schedules) together with any applicable Assignment Details Form;

**“Transfer Fee”** means the fee payable in accordance with clause 8 of these Terms and Regulation 10 of the Conduct Regulations;

**“Type of Work”** means direct medical care delivered to patients by the Nurse as more particularly specified in the Assignment Details Form;

**“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

**“Working Time Regulations”** 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. *Where the Client or end client is a public authority within scope of Off Payroll and the Nurse is supplied through a PSC Intermediary then the Client confirms that it will determine whether Off Payroll applies to an Assignment and notify the Employment Business of its decision as soon as possible.*
- 2.2. These Terms constitute the contract between the Employment Business and the Client for the supply of the Nurse’s services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Nurse, or the passing of any information by the Client about a Nurse to any third party following an Introduction.
- 2.3. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by the Employment Business, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.4. Subject to clause 6.2, no variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing.

## 3. CLIENT OBLIGATIONS

- 3.1. To enable the Employment Business to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Employment Business details of the position which the Client seeks to fill, including the following:
  - 3.1.1. the type of work that the Nurse 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 Client considers necessary or which are required by law or any professional body for the Nurse to possess in order to work in the position;
  - 3.1.4. any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 3.1.5. the date the Client requires the Nurse to commence the Assignment;

- 3.1.6. The duration or likely duration of the Assignment.
- 3.2. The Client 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 Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. If the Client requires the services of a Nurse for more than 48 hours in any week during the course of an Assignment, the Client 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 Client requires the Nurse to work in excess of 48 hours.
- 3.3. For the avoidance of doubt, if the Client requires or may require a Nurse to work on-call, the Client and the Employment Business agree that the Nurse's working time:
- 3.3.1. shall include any on-call time where a Nurse is required either to be both physically present at the Client's premises or at another place as determined by the Client and available to carry out activities or duties for the Client;
- 3.3.2. shall include any time during which the Nurse actually carries out activities or duties for the Client by virtue of being on-call even though she is not required to be physically present throughout the period of on-call time at the Client's premises or at another place as determined by the Client; and
- 3.3.3. Shall not include any on-call time during which the Nurse is not required to be physically present at the Client's premises or at another place as determined by the Client and during which s/he is not carrying out activities or duties for the Client as part of the Assignment.
- 3.4. If the Client 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 Client 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 a Nurse 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 Nurse 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 Nurse shall be afforded such protection as may be appropriate in order to safeguard his/her health and safety.
- 3.5. The Client 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 Agency Workers Regulations.
- 3.6. To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Client 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 since 1 October 2011 in which the relevant Nurse has worked in the same or a similar role with the Client 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, since 1 October 2011, the Nurse has worked in the same or a similar role with the Client 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 Client 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, since 1 October 2011, the Nurse 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 Client;
- 3.6.3.2. completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
- 3.6.3.3. worked in more than two roles during an assignment with the Client 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 Nurse 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 Nurse would be entitled to for doing the same job if the Nurse had been recruited directly by the Client 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 Client 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 Nurse 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, for the purpose of awarding any bonus to which the Nurse may be entitled under the Agency Workers Regulations, the Client will:
  - 3.7.1. integrate the Nurse into its relevant performance appraisal system;
  - 3.7.2. assess the Nurse's performance;
  - 3.7.3. provide the Employment Business with copies of all documentation relating to any appraisal of the Nurse, 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 Nurse's performance for the purpose of awarding any bonus.
- 3.8. The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 3.9. The Client warrants that:
  - 3.9.1. all information and documentation supplied to the Employment Business in accordance with clauses 3.6, 3.7 and 3.8 is complete, accurate and up-to-date; and

3.9.2. it will, 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 clauses 16.7 and 16.8, the Client shall inform the Employment Business in writing of any:

3.10.1. oral or written complaint the Nurse makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and

3.10.2. written request for information relating to the Relevant Terms and Conditions that the Client receives from the Nurse

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 Client and the Client 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 Nurse within 28 days of the *Client's receipt of such* a request in accordance with Regulation 16 of the Agency Workers Regulations and the Client will provide the Employment Business with a copy of any such written statement.

3.11.

Client undertakes that it knows of no reason why it would be detrimental to the interests of the Nurse for the Nurse to fill the Assignment. If it or its client is a United Kingdom public authority within scope of Off-Payroll rules; and

3.11.1 The Client or the Client's client will confirm promptly and accurately, by latest the start date of an Assignment;

3.11.2 if it or its client is a United Kingdom public authority within scope of Off-Payroll rules; and.

3.11.3 if the contract between the Client and its public authority client is an outsourced service not within scope of Off Payroll.

3.11.4 If Off Payroll is in scope the Client will, or will procure that the Client's client will, determine, using reasonable care whether Off Payroll applies to an Assignment and will provide the determination decision to the Employment Business by latest the start date of a Supply.

3.11.5 The Client will or will procure that the Client's client will, provide timely, accurate and full information as is required by the Employment Business to comply with Off Payroll including evidence in support of the Off-Payroll determination when requested, as soon as possible but within the statutory deadline of 31 days.

3.11.6. The Client will, or will procure that the Client's client will, notify the Company as soon as practicable if there is a change of Off Payroll status during a Supply and acknowledges the legal liabilities arising from being in breach of Off Payroll.

3.11.7 If Off-Payroll applies and the Client or the Client's client, as applicable, fail to take reasonable care in making the determination or complying with the statutory deadlines, then the Client or Client's client as public authority shall fulfil its statutory duties as fee payer.

**4. INFORMATION TO BE PROVIDED BY THE EMPLOYMENT BUSINESS TO THE CLIENT**

- 4.1. When Introducing a Nurse to the Client the Employment Business shall inform the Client:
- 4.1.1. of the identity of the Nurse;
  - 4.1.2. that the Nurse 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 Nurse is willing to work in the Assignment; and
  - 4.1.4. The Charges.

**5. TIMESHEETS**

- 5.1. 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 Client shall sign the Employment Business' timesheet verifying the number of hours worked by the Nurse during that week.
- 5.2. Signature of the timesheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a timesheet produced for authentication by the Nurse because the Client disputes the hours claimed, the Client 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 hours, if any, were worked by the Nurse. **Failure to sign the timesheet does not absolve the Client of its obligation to pay the Charges in respect of the hours worked.**
- 5.3. The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Nurse. In the event that the Client is dissatisfied with the Nurse the provisions of clause 12.1 below shall apply.



## 6. CHARGES

- 6.1. The Client agrees to pay the Charges as notified to and agreed with the Client. The Charges are calculated according to the number of hours worked by the Nurse (to the nearest quarter hour) and comprise the following:
- 6.1.1. the Nurse's hourly rate of pay;
  - 6.1.2. an amount equal to any paid holiday leave to which the Nurse is entitled under the Working Time Regulations and, where applicable, the Agency Workers Regulations and which is accrued during the course of an Assignment;
  - 6.1.3. any other amounts to which the Nurse is entitled under the Agency Workers Regulations, where applicable;
  - 6.1.4. employer's National Insurance contributions;
  - 6.1.5. any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable; and
  - 6.1.6. The Employment Business' commission, which is calculated as a percentage of the Nurse's hourly rate.
- 6.2. The Employment Business reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:
- 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 Agency Workers Regulations; and/or
  - 6.2.2. If there is any variation in the Relevant Terms and Conditions.
- 6.3. The Charges are invoiced to the Client on a weekly basis and are payable within seven (7) days. No refunds are payable in respect of the Charges.
- 6.4. In addition to the Charges, the Client will pay the Employment Business an amount equal to any bonus that the Client awards to the Nurse in accordance with clause 3.7 immediately following any such award and the Employment Business will pay any such bonus to the Nurse. For the avoidance of doubt, the Client 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 6.1.6) in addition to any bonus payable to the Nurse.
- 6.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 6.4, save where a relevant concession applies as notified by the Employment Business.
- 6.6. The Employment Business reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of Barclays Bank from the due date until the date of payment.
- 6.7. The Client's obligations under this clause 6 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.

## **7. PAYMENT OF THE AGENCY WORKER**

- 7.1. The Employment Business assumes responsibility for paying the Nurse and where appropriate, for the deduction and payment of National Insurance Contribution and PAYE income Tax applicable to the Nurse pursuant to section 44-47 of the income Tax (Earnings and Pensions) Act 2003.
- 7.2. The Employment Business reserves the right to subcontract the engagement of the Nurse to an intermediary either a UK registered management company or a personal service company, which shall assume the obligations set out in Clause 7.1 and UK employment obligations, including compliance with the Agency Workers Regulations

## **8. TRANSFER FEES**

- 8.1. The Client shall be liable to pay a Transfer Fee if the Client Engages a Nurse Introduced by the Employment Business other than via the Employment Business or introduces the Nurse to a third party and such introduction results in an Engagement of the Nurse by the third party other than via the Employment Business and:
  - 8.1.1. where the Nurse 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 Nurse has not been supplied, such Engagement takes place within 12 months from the date of the Introduction to the Client.

The Transfer Fee will be calculated in accordance with Schedule 2.

- 8.2. If the Client wishes to Engage the Nurse other than via the Employment Business without liability to pay a Transfer Fee, the Client may, on giving two week's written notice to the Employment Business, engage the Nurse for the Period of Extended Hire specified in Schedule 2.
- 8.3. During such Period of Extended Hire the Employment Business shall supply the Nurse 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 the Client shall continue to pay the Charges set out in clause 6. If the Employment Business is unable to supply the Nurse for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Client does not wish to hire the Nurse on the same terms as the Assignment; but the Nurse is Engaged by the Client, the Client shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Client during any part of the Period of Extended Hire worked by the Nurse before being Engaged by the Client. If the Client fails to give notice of its intention to engage the Nurse other than via the Employment Business before such Engagement commences, the parties agree that the Transfer Fee shall be due in full.
- 8.4. No refund of the Transfer Fee will be paid in the event that the Engagement of the Nurse other than via the Employment Business by the Client or by a third party to which the Client introduces the Nurse terminates for any reason.
- 8.5. 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 Nurse is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or 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 to the Client copies of any relevant qualifications or authorisations of the Nurse; and
- 9.1.2. the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Employment Business will in addition take all reasonably practicable steps to obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Nurse and who have agreed that the references they provide may be disclosed to the Client;

And the Employment Business will take such other reasonably practicable steps as are required to confirm that the Nurse 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 Client of the steps it has taken to obtain this information in any event.

- 9.2. The Client shall advise the Employment Business at the time of instructing the Employment Business to supply a Nurse whether during the course of the Assignment, the Nurse will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.
- 9.3. The Client shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable and to allow the Employment Business to select a suitable Nurse for the Assignment.
- 9.4. In particular in the event that the Client removes a Nurse from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007, the Client will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

## **10. POLICIES AND PROCEDURES**

- 10.1. The Client 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.
- 10.2. Should the Client require the Nurse to be subject to any of its policies regarding its operations, to include administering and/or assisting with medication, then it must make these policies known to the Nurse and make clear to the Nurse that the Nurse is required to comply with such policies.
- 10.3. Where the Nurse is supplied to a patient's home, any third party owned equipment in the home shall not be used by the Nurse unless the equipment is in a safe condition and the necessary checks have been undertaken by the provider of the equipment.

## **11. COMPLAINTS PROCEDURE**

- 11.1. Where the Client has any cause for concern or wishes to make any complaint about the services provided during the Assignment, the Client 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 Client and to anyone who requests a copy of the procedure on behalf of the Client.

## **12. UNSUITABILITY OF THE AGENCY WORKER**

- 12.1. The Client undertakes to supervise the Nurse sufficiently to ensure the Client's satisfaction with the Nurse's standards of work. If the Client reasonably considers that the services of the Nurse are unsatisfactory, the Client may terminate the Assignment either by instructing the Nurse to leave the Assignment immediately, or by directing the Employment Business to remove the Nurse. The Employment Business may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Nurse, provided that the Client has notified the Employment Business immediately that they have asked the Nurse to leave the Assignment or the Assignment terminates:
  - 12.1.1. within 4 hours of the Nurse commencing the Assignment where the Assignment is for more than 7 hours; or
  - 12.1.2. within 2 hours for Assignments of 7 hours or less; and provided that notification of the unsuitability of the Nurse is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.
- 12.2. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives the Employment Business reasonable grounds to believe that any Nurse supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Client shall remain liable for all Charges incurred prior to the termination of the Assignment.
- 12.3. The Client shall notify the Employment Business immediately and without delay and in any event within 3 hours if the Nurse fails to attend work or has notified the Client that they are unable to attend work for any reason.

### **13. TERMINATION OF THE ASSIGNMENT**

Any of the Client, the Employment Business or the Nurse may terminate an Assignment at any time without prior notice and without liability (except in the case of termination by the Client, who shall be liable for any Charges due under clause 6 above).

### **14. CONFIDENTIALITY AND DATA PROTECTION**

14.1. All information relating to a Nurse is confidential and subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client 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 Client discloses to the Employment Business and not to use such information except for the purposes of compliance with the Agency Workers Regulations (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Nurse or any AWR Claim).

14.3. 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.

### **15. INTELLECTUAL PROPERTY RIGHTS**

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

## **16. LIABILITY AND INDEMNITY**

- 16.1. Whilst reasonable efforts are made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skill, integrity and reliability from the Nurse and to provide the same in accordance with the Assignment details as provided by the Client, no liability is accepted by the Employment Business for any loss, expense, damage or delay arising from any failure to provide any Nurse for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Nurse or if the Nurse terminates the Assignment for any reason. For the avoidance of doubt, 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. Nurses supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Nurse, whether wilful, negligent or otherwise as though the Nurse was on the payroll of the Client, and shall indemnify and keep indemnified the Employment Business in respect of any Losses incurred by the Employment Business as a result of third party claims arising in respect of the Nurse's acts, errors or omissions.
- 16.3. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Nurse and about any requirements imposed by law or by any professional body, which must be satisfied if the Nurse is to fill the Assignment.
- 16.4. The Client 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 Working Time Regulations, Health & Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, by laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client'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 Nurse during all Assignments.
- 16.5. The Client undertakes not to request the supply of a Nurse 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 Client to perform the duties of a person on strike or taking official industrial action.
- 16.6. The Client shall indemnify and keep indemnified the Employment Business against any Losses incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Client.
- 16.7. The Client shall inform the Employment Business in writing of any AWR Claim which comes to the notice of the Client 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 Client.
- 16.8. If the Nurse brings, or threatens to bring, any AWR Claim, the Client 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 Client'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.
- 16.9. The Employment Business' total liability to the Client under this agreement shall be limited to £100,000 per claim or series of claims arising out of the same act(s), error(s) or omission(s). 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.
- 16.10. The Client shall indemnify and keep indemnified the Employment Business against any Losses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by any third party including specifically, but without limitation, HM Revenue and Customs and any successor, equivalent or related body pursuant to Off Payroll arising out of the Client's fulfilment of its statutory obligations under Off Payroll.

## 17. 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.

## 18. 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.

## 19. GOVERNING LAW AND JURISDICTION

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

### SCHEDULE 1: "COMPARABLE EMPLOYEE", "QUALIFYING PERIOD" AND "EMPLOYMENT BUSINESS"

"**Comparable Employee**" means as defined in Regulation 5(4) of the Agency Workers Regulations being an employee of the Client who:

- (a) works for and under the supervision of the Client and is engaged in the same or broadly similar work as the Nurse having regard, where relevant, to whether the employee and the Nurse have a similar level of qualification and skill; and
- (b) Works or is based at the same establishment as the Nurse or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

For the purpose of the definition of "**Qualifying Period**" in clause 1.1 of these Terms, when calculating whether any weeks completed with the Client count as continuous towards the Qualifying Period, where:

- (a) the Nurse has started working during an assignment and there is a break, either between assignments or during an assignment, when the Nurse is not working;
- (b) the break is
  - (i) For any reason and not more than six Calendar Weeks;
  - (ii) wholly due to the fact that the Nurse is incapable of working in consequence of sickness or injury and the break is 28 Calendar Weeks or less; paragraph (iii) does not apply; and, if required to do so by the Employment Business, the Nurse has provided such written medical evidence as may reasonably be required;
  - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Nurse returns to work;
  - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Nurse is otherwise entitled which is:
    - (v) ordinary, compulsory or additional maternity leave;
    - (vi) ordinary or additional adoption leave;
    - (vii) ordinary or additional paternity leave;
    - (viii) time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
    - (ix) for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;

- (x) wholly due to the fact that the Nurse is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less;
- (xi) wholly due to a temporary cessation in the Client's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Client;
- (xii) wholly due to a strike, lock-out or other industrial action at the Client's establishment; or
- (xiii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and

C. the Nurse returns to work in the same role with the Client,

D. Any weeks during which the Nurse worked for the Client before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Nurse works for the Client after the break. In addition, when calculating the number of weeks during which the Nurse has worked, where the Nurse has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b) (iii) or (b)(iv)i., ii, or iii., for the period that is covered by one or more such reasons, the Nurse shall be deemed to be working in that role with the Client for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Nurse working during an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".

**"Employment Business"** means as defined in Regulation 4 of the Agency Workers Regulations being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) Supplying individuals to work temporarily for and under the supervision and direction of Clients; or (b) Paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of Clients.

Notwithstanding paragraph (b) of this definition a person is not an Employment Business if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for Clients. For the purpose of this definition, a "Client" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.

## **SCHEDULE 2: TRANSFER FEES**

- (A) The Transfer Fee referred to in clause 8 shall be calculated as follows: the Charges multiplied by 1040 (if the Charges are hourly rate) or by 130 (if the Charges are daily rate) or, if the actual amount of the Charges cannot be calculated or there has been no Assignment, then the sum of £15,000.
- (B) The Period of Extended Hire, referred to in clause 8, before the Client Engages a Nurse shall be 26 weeks.