Terms and Conditions

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Agreed terms:

Interpretation

1.1The definitions and rules of interpretation in this clause apply to this agreement.

Assignment: shall have the meaning set out in clause 3.

AWR 2010: the Agency Workers Regulations 2010 (*SI 2010/93*).

Business Day: a day other than a Saturday, Sunday or public holiday when banks in England & Wales are open for business.

Commencement Date: shall have the meaning set out clause 8.

Conduct Regulations 2003: the conduct of employment agencies and employment business regulations 2003 (*SI 2003/3319*).
Engage: the employment of a Temporary Worker or engagement directly or indirectly through any employment business other than through P & G Healthcare Agency [hereafter referred to as PGH] (whether for a definite or indefinite period) and the terms **Engaged** or **Engagement** shall be construed accordingly.

Extended Assignment: shall have the meaning set out in clause 4.3.

Introduce: the provision to the Client of information by PGH by way of a staff profile form or in such format as the Client may from time to time require which identifies the Worker and **Introduction** shall be construed accordingly.

Introduction Fee: shall have the meaning set out in clause 4.2.

Relevant Period: shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003.

Scale of Charges: the relevant scale of fees in respect of Temporary Workers published by PGH from time to time.

Service Fees: this is the fees payable by the Client to PGH in respect of the temporary Workers, calculated by reference to the Scale of Charges and in accordance with clause 7.

Terms and Conditions: these terms and conditions set out in clause 1 to clause 25 inclusive.

Temporary Worker: a Worker Introduced and supplied by PGH to the Client to provide services on behalf of MCA to the Client, not as an employee of the Client. The Worker is deemed to be an agency worker for the purposes of regulation 3 of the AWR 2010.

Unsatisfactory Temporary Worker: has the meaning set out in clause 5.2.

Valid Opt-Out: means written notification from a company Worker and the individual provided by that company Worker in accordance with regulation 32(9) of the Conduct Regulations 2003, amended from time to time.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Worker: a nurse or care worker employed by PGH.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.6 References to clauses are to the clauses of this agreement.

1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. P & G Healthcare Agency's obligations

2.1 These terms set out the agreement between PGH and the Client for the supply of temporary workers by PGH to the Client. For the purposes of the Conduct Regulations 2003, PGH acts as an employment business in relation to the Introduction and supply of temporary workers pursuant to this agreement.

2.2 PGH will perform the services using reasonable skill and care and will ensure that all staff involved in the provision of the services are suitably trained, sufficiently skilled and competent as per the training received.

2.3 Prior to the commencement of an Assignment, PGH will ascertain the:
(a) The identity of the temporary worker; and
(b) The temporary worker's experience, training and qualifications necessary for the assignment.

3. Client's obligations

3.1 When making a request for the provision of a temporary worker to perform certain services (an' assignment'), the Client will give PGH details of:

- The date on which the Client requires the Temporary Worker to commence work and the duration, or likely duration, of the work.
- The position which the Client seeks to fill, including the type of work the temporary worker in that position would be required to do, the location at which, and the hours during which, the temporary worker would be required to work, and any risk to health or safety known to the client and what steps the client has taken to prevent or control such risks.
- The experience, training, qualifications and any authorisation which the client considers are necessary, or which are required by law, or by any professional body, for the Temporary Worker to possess in order to work in the position.
- Any expenses payable by or to the worker.
- Any information reasonably required by PGH in order for PGH to fulfil its obligations under the AWR 2010.

3.2 The client is responsible for providing a safe working environment and safe and appropriate equipment for the tasks to be completed by the temporary worker.

3.3 The Client is responsible for ensuring that the temporary worker is not subject to discrimination by the client's employees, service users or any other third party during the course of an assignment.

3.4 Where the services require residence of a temporary worker at the client's premises, the client shall provide adequate accommodation for rest or sleep and meals for the temporary worker.

3.5 The Client shall ensure that the temporary worker is able to take the same refreshment breaks, meals and facilities as the client's own staff (which shall in any event comply with requirements under applicable law).

3.6 Any costs associated with refreshment breaks (which must be provided in accordance with applicable law), meals or any benefits in kind in accordance with clauses 3.4 and 3.5 are not deductible from the Service Fees, unless otherwise agreed in writing by the parties.

3.7 An authorised representative of the Client is responsible for verifying the hours worked by the Temporary Worker by signing a timesheet or by completing an online timesheet.

4. **Engagement of a Temporary Worker**

4.1 PGH's most valuable asset is its bank of workers. PGH invests heavily in the recruitment, investigation and approval, training and development of all members of its staff. As such it is necessary for PGH to protect its investment.

4.2 If, within 6 months following the Introduction of a temporary worker by PGH to the Client, in circumstances where the temporary worker has not then been supplied by PGH to the Client, the client engages the temporary worker, the client will pay PGH an introduction fee of £8,000 (where the temporary worker is a nurse) or £4,000 (where the temporary worker is a care worker) (the '**Introduction Fee'**).

4.3 If, following the supply of a temporary worker by PGH to the Client, the Client engages the temporary worker within the Relevant Period, the client will pay PGH a transfer fee of £8,000 (where the Temporary Worker is a nurse) or £4,000 (where the temporary worker is a care worker) (the '**Transfer Fee'**).

4.4 Introduction Fees and/or transfer fees will not be payable if the client gives written notice to PGH that it intends to hire (or continue to hire) the temporary worker on a fulltime basis (i.e. 37.5 hours per week) for a period (or further period) of three months (i.e. 487.5 hours) ('**Extended Assignment'**) before it engages the temporary worker and the client does in fact hire the temporary worker for that extended assignment. The service fees payable by the client during the extended assignment will be calculated at the applicable rate.

4.5 If, within 6 months following the Introduction of a Temporary Worker by PGH to the Client, in circumstances where the Temporary Worker has not then been supplied by PGH to the Client, the Client introduces the Temporary Worker to a third party who then engages the temporary worker, the client will pay PGH a referral fee of £8,000 (where the temporary worker is a nurse) or £4,000 (where the temporary worker is a care worker).

4.6 If, following the supply of a temporary worker by PGH to the client, the client introduces the temporary worker to a third party who then engages the temporary worker within the

relevant period, the client will pay PGH a referral fee of £8,000 (where the temporary worker is a nurse) or £4,000 (where the temporary worker is a care worker).

5. Temporary workers

5.1 The Client will review the information provided by PGH in accordance with clause 2.3 and if (acting reasonably and in a non-discriminatory fashion) the client is not satisfied with the proposed temporary worker, the client shall notify PGH prior to the temporary worker arriving at the client's premises to perform the services so that PGH can find a suitable alternative temporary worker.

5.2 If (acting reasonably and in a non-discriminatory fashion) either party believes that a temporary worker is unsuitable to perform the relevant assignment once the temporary worker has arrived at the client's premises and/or the provision of services by the temporary worker has commenced (an '**Unsatisfactory Temporary Worker'**), then such party shall notify the other party in writing, giving the grounds for its dissatisfaction.

5.3 Upon notification by either party in accordance with clause 5.2, PGH will use reasonable endeavours to replace the unsatisfactory temporary worker with another temporary worker as soon as is reasonably practicable. If PGH is unable to replace the unsatisfactory temporary worker within 48 hours, the client may terminate the assignment immediately on notifying PGH in writing. The client shall remain liable for payment of service fees due and payable for services already performed if the circumstances in clauses 5.2 and 5.3 arise.

5.4 If a temporary worker is absent for any reason during an assignment, PGH will use its reasonable endeavours to provide another suitably qualified temporary worker to cover the absence. PGH will notify the Client if no suitable replacement is available and shall have no liability to the Client in respect of the absence.

5.5 The Client may terminate an Assignment at any time on giving 24 hours notice in writing to PGH.

5.6 PGH may, at its sole discretion; charge the full amount of any service fees which would have become due in respect of any assignment which is terminated by the client on less than 24 hours notice.

6. Fees and VAT

6.1 The Client will pay PGH the service fees in respect of temporary workers.

6.2 The Service Fees will:

- Be calculated according to the amount of time worked by the temporary worker (rounded up to the nearest 15 minutes); and
- Comprise the entire charge in respect of the temporary worker and shall be exclusive of VAT (if applicable);

6.3 PGH shall be entitled, at its sole discretion, to review and increase or decrease the fees set out in the scale of charges periodically (and in any event every 6 months in respect of qualified nurses and every 12 months in respect of care workers). PGH shall give the client written notice of any changes to the scale of charges four weeks before they will take effect.

6.4 Unless otherwise agreed by the parties in writing, the client shall reimburse PGH, in addition to the fees, the cost of hotel, subsistence, travelling and any other ancillary expenses (**Expenses**) reasonably and properly incurred by the temporary worker in the provision of the Services.

6.5 PGH will submit its invoice to the Client in respect of the fees and any expenses weekly in arrears.

6.6 PGH will submit invoices to the Client via email or post (as agreed between the parties) unless the Client has notified PGH.

6.7 The Client shall pay each invoice submitted to it by PGH, in cleared funds, within 28 days of receipt, to a bank account nominated in writing by PGH or by cheque.

6.8 If the Client fails to make any payment due to PGH under this agreement by the due date for payment, then, the Client shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

7. Term

This Agreement shall commence on the date stated in the Contract Details (the c**ommencement Date**) and shall continue, unless terminated earlier in accordance with clause 8, until either party gives to the other party 30 days'' written notice to terminate, expiring on or after the first anniversary of the Commencement Date.

8. Default and early termination

8.1 PGH may withdraw temporary workers in circumstances, which, in PGH's reasonable opinion, make the completion of an assignment untenable. Such circumstances would include (without limitation) failure by the Client to provide safe and appropriate equipment and a safe environment in accordance with clause 3.2, failure to pay an invoice in accordance with clause 9.2(a) or 3 occurrences of late payment of an invoice within a calendar year.

8.2 Without affecting any other right or remedy available to it, PGH may terminate this agreement with immediate effect by giving written notice to Client if the Client:

- Fails to pay any amount due under this Agreement on the due date and remains in default no less than 14 days after being notified in writing to make such payment.

- Commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing to do so.
- Takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
- Suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business or if the Client's financial position deteriorates to such an extent that in PGH's opinion the Client's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

9. Effect of early termination

9.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

9.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement, which existed at or before the date of termination.

10. Liability and insurance

10.1 The Client shall at all times comply with its obligations under the AWR 2010, including but not limited to providing any temporary workers with access to collective facilities and amenities and employment opportunities subject to and in accordance with regulation 12 and 13 of the AWR 2010.

10.2 In the event that either party receives an allegation by any temporary worker that there has been a breach of the AWR 2010 in relation to the supply of that person to the Client by PGH (whether that allegation has been made as a request for information under regulation 16 of the AWR 2010 or otherwise), it shall provide a copy of that allegation to the other party within seven days of receipt. The parties shall co-operate with each other in relation to responding to that allegation, which shall include supplying any information, which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

10.3 The Client will maintain in force, with a reputable insurance company, and shall procure that the temporary worker benefits from, adequate insurance cover for any loss, injury or damage caused by or to the temporary worker during the course of an assignment, including (without limitation) employers' liability insurance in an amount not less than £10 million in respect of any one claim and public liability insurance (including malpractice cover for treatment risks, error and omissions) in an amount not less than £5 million in respect of any one claim.

10.4 PGH will maintain, for the term of this agreement, employers' liability insurance in an amount not less than £10 million in respect of any one claim and public liability insurance (including malpractice cover for treatment risks, error and omissions) in an amount not less than £5 million in respect of any one claim.

10.5 The Client shall be responsible for insuring to full replacement value all personal furniture and belongings of individuals in their care and accepts that PGH shall not be responsible or have any liability for any loss of or damage to such individuals' personal items (including but not limited to cash, credit cards, cheques, certificates, documents or personal effects such as jewellery) unless the Client can demonstrate to PGH's satisfaction (acting reasonably), that the temporary worker has been negligent or fraudulent in respect of those individuals' belongings.

10.6 Subject to clause 10.9, due to the nature of the service offered by PGH to the Client, PGH shall have no liability to the Client whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss, expenses, damage or delay arising from any failure to provide a temporary worker for all or part of an assignment.

10.7 Subject to clause 10.9, PGH shall have no liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this agreement.

10.8 Subject to clause 10.9, PGH's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the total of the Service Fees paid under this agreement.

10.9 Nothing in this agreement shall limit or exclude either party's liability for:

- Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.
- Fraud or fraudulent misrepresentation or
- Any other liability, which cannot be limited or excluded by applicable law.
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10.10 The provisions of this clause 11 shall survive termination of this agreement.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

- To its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

- (b) As may be required by law, a court of competent jurisdiction or any Governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

12. Warranty

Each party warrants that it has full capacity and authority to enter into and perform this agreement.

13. Non-solicitation

Subject to clause 4, the Client agrees that it will not, either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of six months from, the end of the term of this agreement, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of PGH who has worked on the services provided under this agreement at any time during the term of this agreement.

14. Variation

Subject to clause 7.3, no variation of this agreement shall be effective unless it is in writing and signed by the parties.

15. Assignment and other dealings

Neither party shall assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

16. No partnership or agency

16.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

17. Entire agreement

17.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

17.3 Nothing in this clause 18 shall limit or exclude any liability for fraud.

18. Third party rights

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

19. Notices

19.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

19.2 Any notice shall be deemed to have been received:

- If delivered by hand, on signature of a delivery receipt; or
- If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
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19.3 This clause 20 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, 'writing' shall not include e-mail**.**

20. Disputes

20.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it ('**Dispute'**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in accordance with PGH's written Complaints Procedure that shall be available upon request and in accordance with this clause:

- Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars and the parties attempt in good faith to resolve the dispute within 28 Business Days, or such other period which may be agreed between the parties.
- Where such dispute cannot be resolved, the parties will attempt, acting in good faith, to settle it by mediation under the auspices of the ADR Group. Unless otherwise agreed by the parties within 14 days, the mediator shall be appointed by the President of the Law Society of England and Wales.
- (c) The parties shall agree upon the conduct of the mediation and in default of agreement, the mediator (if he has been appointed) shall consult with the parties and determine the issue.

20.2 If the dispute is not resolved in accordance with clause 20.1 within 60 days of referral for mediation, either party may refer the dispute to the English Courts for determination.

20.3 Nothing in clause 20.1 shall restrict PGH from pursuing its outstanding invoices through the English Courts or from seeking injunctive relief.

21. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22. Jurisdiction

Subject to clause 21, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

23. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement, including payment, if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving 14 days'' written notice to the affected party.

24. Severance

24.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 24 shall not affect the validity and enforceability of the rest of this agreement.

24.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.