

Terms of Business

Between:

MCM Medical Ltd.

And:

Date of Agreement:



Contents:

The Parties

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Parties

(1) a company registered in England and Wales under company registration number having its registered address at (the “Client/ Hirer”);

And

(2) **MCM Medical Ltd**, a company incorporated and registered in England and Wales with company number **09218422** whose registered office is at **Business Suite, Breck Road, Poulton-Le-Fyde, Lancashire, FY6 7AA** (the “Agency” or “Employment Business”)

RECITALS

1. MCM Medical carries on the business of sourcing and supplying contractors to provide services to clients of MCM Medical. The Hirer has instructed MCM Medical to supply an Intermediary to provide certain services, (“**the Intermediary Services**”) as specified in the relevant Assignment Details Form.
2. MCM Medical will introduce an Intermediary to the Hirer to provide the Intermediary Services on the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

DEFINITIONS AND INTERPRETATION

In this Agreement the following definitions apply:

“Agency Worker”	means any officer, employee, worker or representative of the Intermediary supplied to provide the Intermediary Services;
“Apprenticeship Levy”	means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay as you Earn) (Amendment) Regulations 2017;
“Assignment”	means the Intermediary Services to be performed by MCM Medical Worker for the Hirer for a period of time during which the Intermediary is supplied by MCM Medical to the Hirer;
“Assignment Details Form”	means written confirmation of the Assignment details agreed with the Hirer prior to commencement of the Assignment;
“AWR”	means MCM Medical Workers Regulations 2010
“AWR Claim”	means any complaint or claim to a tribunal or court made by or on behalf of MCM Medical Worker against the Hirer and/or MCM Medical for any breach of the AWR;



“Calendar Week”	means any period of seven days starting with the same day as the first day of the First Assignment;
“Charges”	means MCM Medical’s charges calculated in accordance with clause 8.1 and as may be varied from time to time in accordance with this Agreement;
“Comparable Employee”	means as defined in Schedule 1 to this Agreement;
“Conduct Regulations”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003
“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 1998, the General Data Protection Regulation (EU 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 Intermediary’s and/or MCM Medical Worker’s acceptance of the Hirer’s offer), employment or use of the Intermediary’s services or the services of MCM Medical Worker, by the Hirer or by any third party to whom they have been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis whether under a contract of service or for services, or an agency, licence, franchise or partnership arrangement, or any other engagement and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
“First Assignment”	means: <ol style="list-style-type: none">1. the relevant Assignment; or2. if, prior to the relevant Assignment:<ol style="list-style-type: none">2.1. MCM Medical Worker has worked in any assignment in the same role with the relevant Hirer as the role in which MCM Medical Worker works in the relevant Assignment; and2.2. 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 MCM Medical Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);

“FOIA”	means the Freedom of Information Act 2000
“Hirer’s Group”	means (a) any individual, company, partnership, statutory body 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;
“Inside IR35”	means an Assignment which meets the provisions of Section 61M ITEPA;
“Intermediary”	means the person, firm or corporate body Introduced to the Hirer by MCM Medical to carry out an Assignment (and, save where otherwise indicated, includes any Agency Worker);
“Intermediaries Legislation”	means sections 48 – 61 ITEPA;
“Introduction”	means (i) the passing to the Hirer of a curriculum vitae or information which identifies the Intermediary or Agency Worker or (ii) the Hirer’s interview of an Intermediary or Agency Worker (in person, by telephone or by any other means), following the Hirer’s instruction to MCM Medical to supply a temporary worker; or (iii) the supply of an Intermediary; and, in any case, which leads to an Engagement of that temporary worker, Intermediary or Agency Worker; and “Introduces” and “Introduced” shall be construed accordingly;
“IR35 Status Decision”	means the Hirer’s decision on the application of the Intermediaries Legislation to the Assignment in accordance with Section 61T ITEPA, to be provided in writing to MCM Medical;
“ITEPA”	means the Income Tax (Earnings and Pensions) Act 2003;
“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;
and "Loss" shall be construed accordingly;

"NICs Legislation"

means 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;

"Outside IR35"

means an Assignment which does not meet the provisions of Section 61M ITEPA;

"Public Authority"

means (a) as defined in the FOIA and (b) as further defined in Section 61L ITEPA;

"Period of Extended Hire"

means any additional period that the Hirer wishes the Intermediary 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 MCM Medical Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 1 to this Agreement;

"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 Intermediary worked for the Hirer having been supplied by MCM Medical; or (b) the period of 14 weeks commencing on the first day on which the Intermediary worked for the Hirer having been supplied by MCM Medical 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:

1. pay;
2. the duration of working time;
3. night work;
4. rest periods;
5. rest breaks; and
6. 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) any basic working and employment conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;



“Remuneration”	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 taxable, (and, where applicable, non-taxable) payable to or receivable by MCM Medical Worker and/or the Intermediary for services rendered to or on behalf of the Hirer.
“Temporary Work Agency”	means as defined in Schedule 1 to this Agreement;
“Transfer Fee”	means the fee payable in accordance with clause 10 below 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

- 1.1. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.2. The headings contained in this Agreement are for convenience only and do not affect their interpretation.
- 1.3. 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 this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

1. THE AGREEMENT

2. This Agreement together with the attached Schedules and any applicable Assignment Details Form constitutes the entire agreement (**“the Agreement”**) between MCM Medical and the Hirer for the supply of the Intermediary Services by MCM Medical to the Hirer, and is deemed to be accepted by the Hirer by virtue of its request for, interview with, or Engagement of an Intermediary or the passing of any information about MCM Medical Worker or Intermediary to any third party following an Introduction.
 - 2.1. Unless otherwise agreed in writing by the Managing Director of MCM Medical this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Hirer.
 - 2.2. Subject to Clause 2.a no variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Managing Director of MCM Medical and the Hirer and are set out in writing.
 - 2.3. MCM Medical shall act as an employment business when Introducing an Intermediary for Assignments with the Hirer.



- 2.4. The Hirer acknowledges that the Intermediary and MCM Medical 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. THE HIRER'S OBLIGATIONS

3.1. Obligations regarding the Conduct Regulations

- 3.2. To enable MCM Medical to comply with its obligations under the Conduct Regulations the Hirer undertakes to provide to MCM Medical details of the position which the Hirer seeks to fill, including the following:

3.2.1. the type of work that the Intermediary would be required to do;

3.2.2. the location and hours of work;

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

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

3.2.5. the date the Hirer requires the Intermediary to commence the Assignment;

3.2.6. the duration or likely duration of the Assignment.

- 3.3. The Hirer undertakes that it knows of no reason why it would be detrimental to the interests of the Intermediary or MCM Medical Worker for the Intermediary or Agency Worker to fill the Assignment.

4. Obligations regarding AWR

- 4.1. The Hirer will comply with its obligations under Regulations 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.

- 4.2. To enable MCM Medical 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 MCM Medical's request:

4.2.1. to inform MCM Medical of any Calendar Weeks in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party which count or may count towards the Qualifying Period;

4.2.2. if, in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment in which the relevant Agency Worker has worked in the same or a similar role with the Hirer including via any third party to provide MCM Medical 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 MCM Medical;



- 4.2.3. to inform MCM Medical if, in the 24 months immediately preceding the start of the Assignment and/or during the relevant Assignment MCM Medical Worker has:
 - 4.2.3.1. completed two or more assignments with the Hirer;
 - 4.2.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 4.2.3.3. 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;
- 4.2.4. save where MCM Medical Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 4.2.4.1. provide MCM Medical with written details of the basic working and employment conditions MCM Medical Worker would be entitled to for doing the same job if MCM Medical 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;
 - 4.2.4.2. inform MCM Medical 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;
 - 4.2.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide MCM Medical with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
 - 4.2.4.4. inform MCM Medical 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
- 4.2.5. save where MCM Medical Worker will not complete the Qualifying Period during the term of the Assignment, to provide MCM Medical with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 4.3. In addition, for the purpose of awarding any bonus to which MCM Medical Worker may be entitled under the AWR, the Hirer will:
 - 4.3.1. integrate MCM Medical Worker into its relevant performance appraisal system;
 - 4.3.2. assess MCM Medical Worker's performance;
 - 4.3.3. provide MCM Medical with copies of all documentation relating to any appraisal of MCM Medical Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 4.3.4. provide MCM Medical with all other assistance MCM Medical may request in connection with the assessment of MCM Medical Worker's performance for the purpose of awarding any bonus.



- 4.4. The Hirer will comply with all MCM Medical's requests for information and any other requirements to enable MCM Medical to comply with the AWR.
- 4.5. The Hirer warrants that:
 - 4.5.1. all information and documentation supplied to MCM Medical in accordance with clauses 3.2 to 4.4 inclusive is complete, accurate and up-to-date; and
 - 4.5.2. it will, during the term of the relevant Assignment, immediately inform MCM Medical in writing of any subsequent change in any information or documentation provided in accordance with clauses 3.2 to 4.4 inclusive.
- 4.6. Without prejudice to clauses 16.6 and 16.7, the Hirer shall inform MCM Medical in writing of any:
 - 4.6.1. oral or written complaint MCM Medical Worker makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
 - 4.6.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from MCM Medical Worker
 - 4.6.3. 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 undertakes to take such action and give such information and assistance as MCM Medical may request, and within any timeframe requested by MCM Medical, in order to resolve any such complaint or to provide any such information in a written statement to MCM Medical 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 MCM Medical with a copy of any such written statement.

5. Obligations regarding the Intermediaries Legislation

- 5.1. The Hirer confirms that it is a Public Authority.
- 5.2. The Hirer confirms that it has assessed the Assignment as an Inside IR35 Assignment: this is the Hirer's IR35 Status Decision.
- 5.3. The Hirer will advise MCM Medical in writing immediately if any of the circumstances of the Assignment change which mean that the Assignment becomes an Outside IR35 Assignment.

6. INFORMATION TO BE PROVIDED BY MCM MEDICAL TO THE HIRER

- 6.1. When Introducing an Intermediary to the Hirer MCM Medical shall inform the Hirer:
 - 6.1.1. of the identity of the Intermediary and that of MCM Medical Worker supplied by the Intermediary to carry out the Assignment;
 - 6.1.2. that MCM Medical Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;



6.1.3. that MCM Medical Worker is willing to work in the Assignment;

6.1.4. details of the Intermediary Services to be provided; and

6.1.5. the Charges.

6.2. 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 (excluding Saturday, Sunday and any Public or Bank Holiday) following, save where the Intermediary is Introduced for an Assignment in the same position as one in which the Intermediary 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.

7. TIMESHEETS

7.1. At the end of each week of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than 1 week) the Hirer shall sign MCM Medical's timesheet verifying the number of hours worked by MCM Medical Worker during that week.

7.2. Signature of the timesheet by the Hirer is confirmation of the number of hours worked by MCM Medical Worker. If the Hirer is unable to sign a timesheet produced for authentication by the Intermediary because the Hirer disputes the hours claimed, the Hirer shall inform MCM Medical as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with MCM Medical to enable MCM Medical to establish what hours, if any, were worked by MCM Medical Worker. **Failure to sign the timesheet does not absolve the Hirer of its obligation to pay the charges in respect of the hours worked.**

7.3. 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 Intermediary. In the event that the Hirer is dissatisfied with the work performed by the Intermediary the provisions of clauses 12.1 and 13 below shall apply.

8. CHARGES

8.1. The Hirer agrees to pay the Charges as notified by MCM Medical. The Charges are calculated according to the number of hours/days worked by MCM Medical Worker and comprise the following:

8.1.1. MCM Medical Worker's hourly/daily rate of pay;

8.1.2. any other amounts to which MCM Medical Worker is entitled under the AWR, where applicable;

8.1.3. employer's national insurance contributions;

8.1.4. any travel, hotel or other expenses as may have been agreed with the Hirer; and

8.1.5. MCM Medical's commission, which is calculated as a percentage of MCM Medical Worker's hourly/ daily rate.

8.2. MCM Medical reserves the right to vary the Charges agreed with the Hirer, by giving written notice to the Hirer:



8.2.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, ITEPA, the NICs Legislation, the WTR or the Apprenticeship Levy; and/or

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

8.3. MCM Medical will invoice the Charges to the Hirer on a monthly basis. The Hirer will pay the Charges within 30 days of the date of the invoice.

8.4. In addition to the Charges, the Hirer will pay MCM Medical an amount equal to any bonus that the Hirer awards to MCM Medical Worker in accordance with clause 4.3 immediately following any such award and MCM Medical will pay any such bonus to the Intermediary for onward payment to MCM Medical Worker. For the avoidance of doubt, the Hirer will also pay any employers national insurance contributions and MCM Medical's commission in addition to any bonus payable to MCM Medical Worker.

8.5. VAT is payable at the applicable rate on the entirety of the Charges and all sums payable under clause 8.4.

8.6. MCM Medical 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 annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

8.7. MCM Medical will not refund any of the Charges.

8.8. 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.

9. PAYING THE INTERMEDIARY

9.1. MCM Medical is responsible for paying the Intermediary.

10. TRANSFER FEES

10.1. The Hirer shall be liable to pay a Transfer Fee if the Hirer engages the Intermediary or any Agency Worker Introduced by MCM Medical other than via MCM Medical, or Introduces the Intermediary or any Agency Worker to a third party and such Introduction results in an Engagement of the Intermediary or any Agency Worker by the third party other than via MCM Medical and:

10.1.1. where the Intermediary or Agency Worker has been supplied by MCM Medical, such Engagement takes place during the Assignment or within the Relevant Period; or

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

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

10.2. If the Hirer wishes to Engage the Intermediary other than via MCM Medical, without liability to pay a Transfer Fee the Hirer may, on giving two week's written notice to MCM Medical, engage the Intermediary for the Period of Extended Hire specified in Schedule 2.



10.3. During such Period of Extended Hire MCM Medical shall supply the Intermediary on the same terms on which it 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 MCM Medical received the notice in clause 10.2; and the Hirer shall continue to pay the Charges set out in clause 6. If MCM Medical is unable to supply the Intermediary for any reason outside its control for the whole or any part of the Period of Extended Hire; or the Hirer does not wish to hire the Intermediary on the same terms as the Assignment; but the Intermediary or MCM Medical Worker is Engaged by the Hirer, 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 Intermediary before being Engaged by the Hirer. If the Hirer fails to give notice of its intention to Engage the Intermediary other than via MCM Medical before the Engagement takes place, the parties agree that the Transfer Fee shall be due in full.

10.4. Where prior to the commencement of the Hirer's Engagement other than via MCM Medical MCM Medical and the Hirer agree that such Engagement will be on the basis of a fixed term of less than 12 months, MCM Medical may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 2 pro-rata. Such reduction is subject to the Hirer Engaging the Intermediary for the agreed fixed term. Should the Hirer extend the Intermediary's Engagement or re-Engage the Intermediary within 12 months from the commencement of the initial Engagement MCM Medical reserves the right to recover the balance of the Transfer Fee.

10.5. MCM Medical will not refund the Transfer Fee if the Engagement of the Intermediary other than via MCM Medical by the Hirer or by a third party to which the Hirer introduces the Intermediary or any Agency Worker, subsequently terminates or terminates before the end of the fixed term referred to in clause 10.4.

10.6. VAT is payable at the applicable rate in addition to any Transfer Fee due.

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

11.1. Where:

11.1.1. the Intermediary or MCM Medical Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment MCM Medical will take all reasonably practicable steps to obtain and offer to provide to the Hirer copies of any relevant qualifications or authorisations of MCM Medical Worker; and

11.1.2. in addition, where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, MCM Medical 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 MCM Medical Worker and who have agreed that the references they provide may be disclosed to the Hirer;

11.1.2.1.1. and such other reasonably practicable steps as are required to confirm that the Intermediary or MCM Medical Worker supplied to do the work is suitable for the Assignment. If MCM Medical 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.

11.2. The Hirer shall advise MCM Medical at the time of instructing MCM Medical to supply an Intermediary, whether during the course of the Assignment, the Intermediary or MCM Medical Worker 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

11.3. The Hirer shall assist MCM Medical by providing any information required to allow MCM Medical to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006, and to allow MCM Medical to select a suitable Intermediary for the Assignment.

11.4. In particular in the event that the Hirer removes an Intermediary from an Assignment in circumstances which would require MCM Medical to provide information to the Disclosure and Barring Service (or equivalent authority) under the Safeguarding Vulnerable Groups Act 2006, the Hirer will provide sufficient information to MCM Medical to allow it to discharge its statutory obligations.

12. UNSUITABILITY OF THE INTERMEDIARY

12.1. The Hirer undertakes to supervise the Intermediary sufficiently to ensure the Hirer's satisfaction with the Intermediary's standards of work. If the Hirer reasonably considers that the Intermediary Services are unsatisfactory, the Hirer may terminate the Assignment either by instructing the Intermediary to leave the Assignment immediately, or by directing MCM Medical to remove the Intermediary. MCM Medical may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Intermediary, provided that the Hirer has notified MCM Medical that they have asked the Intermediary to leave the Assignment or the Assignment terminates:

12.1.1. within 4 hours of the Intermediary 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;

12.1.3. and provided that notification of the unsuitability of the Intermediary is confirmed in writing to MCM Medical within 48 hours of the termination of the Assignment.

12.2. MCM Medical shall notify the Hirer immediately if it receives or otherwise obtains information which gives MCM Medical reasonable grounds to believe that an Intermediary supplied to the Hirer is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith without prior notice and without liability. Notwithstanding, the Hirer shall remain liable for all such Charges incurred prior to the termination of the Assignment.

12.3. The Hirer shall notify MCM Medical immediately and without delay and in any event within 4hrs hours if the Intermediary or MCM Medical Worker fails to provide the Intermediary Services or has notified the Hirer that they are unable to provide the Intermediary Services for any reason.

13. TERMINATION OF THE ASSIGNMENT

13.1. Either party may terminate the Assignment, in writing, at any time without prior notice or liability.



13.2. Notwithstanding the provisions of clause 13.1 the Hirer may terminate the Assignment with immediate effect by notice in writing to MCM Medical where:

- 13.2.1. the Intermediary has acted in breach of any statutory or other reasonable rules and regulations applicable to them while providing the Intermediary Services; or
- 13.2.2. the Intermediary is in wilful or persistent breach of its obligations; or
- 13.2.3. the Hirer reasonably believes that the Intermediary has not observed any condition of confidentiality applicable to the Intermediary from time to time; or
- 13.2.4. the Hirer reasonably considers that the Intermediary's provision of the Intermediary Services is unsatisfactory.

13.3. MCM Medical may terminate an Assignment with immediate effect by notice in writing if:

- 13.3.1. the Hirer is in 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
- 13.3.2. the Hirer fails to pay any amount which is due to MCM Medical in full and on the date that the payment falls due; or
- 13.3.3. 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
- 13.3.4. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Hirer; or
- 13.3.5. 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
- 13.3.6. the Hirer fails to provide written reasons for its IR35 Status Decision within 7 days of the date of a request for those reasons from MCM Medical; or
- 13.3.7. the Hirer provides or seeks to provide, a fraudulent document which states that MCM Medical Worker does not work under (or is not subject to the right of) supervision, direction or control of any person as to the manner in which s/he provides his/ her services; or
- 13.3.8. the circumstances of the Assignment change such that the Assignment ceases to be an Inside IR35 Assignment and becomes an Outside IR35 Assignment; or
- 13.3.9. MCM Medical knows or suspects that the Hirer has breached the Data Protection Laws.

14. CONFIDENTIALITY AND DATA PROTECTION



14.1. All information relating to an Intermediary and MCM Medical Worker is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing Intermediary 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 information at all times.

14.2. MCM Medical undertakes to keep confidential all Relevant Terms and Conditions that the Hirer discloses to MCM Medical 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. Information relating to MCM Medical's 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

15.1. All copyright, trademarks, patents and other intellectual property rights deriving from the provision of the Intermediary Services by the Intermediary for the Hirer during the Assignment shall belong to the Hirer, save such rights as may be expressly owned or retained by the Intermediary and set out in the Assignment Details Form. Accordingly MCM Medical shall use its reasonable endeavours to ensure that the Intermediary shall (and any relevant member of MCM Medical 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 MCM Medical to give satisfaction to the Hirer by ensuring reasonable standards of skills, integrity and reliability from the Intermediary and to provide the same in accordance with the Assignment details as provided by the Hirer no liability is accepted by MCM Medical for any Losses arising from the failure to provide an Intermediary for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Intermediary or MCM Medical Worker or if the Intermediary terminates the Assignment for any reason. For the avoidance of doubt, MCM Medical 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. The Intermediary supplied by MCM Medical to the Hirer is engaged on a contract for services. MCM Medical Worker supplied by the Intermediary is deemed to work on an Inside IR35 assignment under (or subject to the right of) supervision, direction or control of the Hirer as to the manner in which s/he provides his/her services for the duration of the Assignment.

16.3. The Hirer shall advise MCM Medical of any special health and safety matters about which MCM Medical is required to inform the Intermediary and about any requirements imposed by law or by any professional body, which must be satisfied if the Intermediary is to fill the Assignment. The Hirer will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of the Intermediary.



- 16.4. The Hirer undertakes not to request the supply of an Intermediary 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.
- 16.5. If MCM Medical Worker brings, or threatens to bring, any AWR Claim, the Hirer undertakes to take such action and to give such information and assistance as MCM Medical may request, and within any timeframe requested by MCM Medical 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.
- 16.6. The Hirer shall inform MCM Medical 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.
- 16.7. The Hirer shall indemnify and keep indemnified MCM Medical against any Losses incurred by MCM Medical by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to any of the provisions of ITEPA or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) 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.
- 16.8. The Hirer shall indemnify and keep indemnified MCM Medical against any Losses incurred by MCM Medical by reason of any proceedings, claims or demands by the Intermediary, MCM Medical Worker or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Hirer.

17. NOTICES

- 17.1.1. All notices which are required to be given in accordance with this Agreement 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

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

19. RIGHTS OF THIRD PARTIES

- 19.1. 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.



20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement is governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.



Signed for and on behalf of MCM Medical

[print name here]

Signed for and on behalf of the Hirer

[print name here]

I confirm I am authorised to sign this Agreement for and on behalf of the Hirer.

Date



SCHEDULE 1: “COMPARABLE EMPLOYEE” “QUALIFYING PERIOD” AND TEMPORARY WORK AGENCY

“Comparable Employee” means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

1. works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as MCM Medical Worker having regard, where relevant, to whether the employee and MCM Medical Worker have a similar level of qualification and skill; and
2. works or is based at the same establishment as MCM Medical Worker 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.
 - 2.1. For the purpose of the definition of “Qualifying Period” in clause 0 of this Agreement, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:
 3. MCM Medical Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when MCM Medical Worker is not working;
 4. the break is:
 - 4.1. for any reason and not more than six Calendar Weeks;
 - 4.2. wholly due to the fact that MCM Medical Worker 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 MCM Medical, MCM Medical Worker has provided such written medical evidence as may reasonably be required;
 - 4.3. 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 MCM Medical Worker returns to work;
 - 4.4. wholly for the purpose of taking time off or leave, whether statutory or contractual, to which MCM Medical Worker is otherwise entitled which is:
 - 4.4.1. ordinary, compulsory or additional maternity leave;
 - 4.4.2. ordinary or additional adoption leave;
 - 4.4.3. ordinary or additional paternity leave;
 - 4.4.4. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - 4.4.5. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;
 - 4.5. wholly due to the fact that MCM Medical Worker 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;
 - 4.6. wholly due to a temporary cessation in the Hirer’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 Hirer;
 - 4.7. wholly due to a strike, lock-out or other industrial action at the Hirer’s establishment; or
 - 4.8. wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
 5. MCM Medical Worker returns to work in the same role with the Hirer,
 - 5.1. any weeks during which MCM Medical Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks



during which MCM Medical Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which MCM Medical Worker has worked, where MCM Medical Worker 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, MCM Medical Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by MCM Medical Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of “Qualifying Period”.

- 5.2. “Temporary Work Agency” means as defined in Regulation 4 of the AWR 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:
6. supplying individuals to work temporarily for and under the supervision and direction of hirers; or
 7. 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 hirers.
- 7.1. Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency 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 hirers. For the purpose of this definition, a “hirer” 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/PERMANENT FEES

- 1.1.
2. The Transfer Fee referred to in clause 8 shall be calculated as follows: 10% of the Remuneration payable to the Intermediary or Agency Worker (as appropriate) during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the Charges multiplied by 100.
3. The Period of Extended Hire, referred to in clause 8, before the Hirer Engages an Intermediary or Agency Worker (as appropriate) shall be: 12 weeks.
4. The Introduction Fee payable is calculated as **12%** of the Candidate's total first year's remuneration. All other benefits (including but not limited to for the avoidance of doubt any bonuses, car allowance or welcome payments), regardless of whether they form part of the Candidate's gross taxable income, will not be included within the calculation.

SCHEDULE 3: HOURLY PAY AND CHARGE RATES

1. Subject to agreement of an hourly margin set out in our Framework Rate Card for all bands of Temporary Staff by the Hirer's Group, MCM Medical shall pay Contractor for the Services in accordance with the fees specified in their individual Assignment Schedule, plus any applicable VAT.



2. MCM Medical will invoice weekly to a dedicated contact within the Hirer's Group. All fees are Exclusive of VAT.
3. Where Off-Payroll applies to an assignment and where required in accordance with Off-Payroll, Contractor acknowledges and agrees that Employment Business shall deduct sums in respect of PAYE Income Tax and National Insurance Contributions Employment Business calculated in accordance with Off-Payroll prior to payment of Contractor's invoice. Employment Business shall remit Employer's NICs to HM Revenue and Customs to comply with its statutory duty. MCM Medical will provide a statement to Contractor setting out such deductions. Save where and to the extent required by law, the Contractor is and will continue to be wholly responsible for the correct payment of all taxes and statutory deductions.
4. Payments will be made to the Contractor within 7 days of receipt of a valid invoice or as otherwise specified in the Assignment Schedule.
5. If the Contractor is unable or unwilling for any reason to provide the Services in the course of the Assignment then no fee will be payable by Employment Business to Contractor during any period that the Services are not provided.
6. All invoices relating to the provision of services by the Contractor should be paid, where a signed record of time/expenses is provided, within 14 days.
7. If MCM Medical has reason to believe that the Hirer's Group may not pay MCM Medical its invoices (or parts of them) in relation to the Contractor they agree to provide MCM Medical with any reasonably requested information, explanations and/or written statements relating to the Assignment/Services and with any reasonable assistance necessary to help MCM Medical obtain such payment from the Hirer's Group.