

TERMS OF ENGAGEMENT WITH A LIMITED COMPANY CONTRACTOR

THE PARTIES

- (1) [Contractor's name] Limited [registered company no.] [trading as] of [address – (**"the Contractor"**)].
- (2) Clinical Employment Services Ltd, whose registered office is at Units 31-33 Freetrade House, Lowther Road, Stanmore, HA7 1EP trading as CES Locums ("The Company") (registered company no. 5240338) (**"the Employment Business"**).

RECITALS

- (A) The Contractor carries on the business of the provision of contractor services and has agreed to provide the services (**"the Contractor Services"**) to CES Locums.
- (B) The Employment Business has requested the Contractor and the Contractor has agreed with the Employment Business, to supply the Contractor Services to them on the terms and subject to the conditions of this Agreement.

1. DEFINITIONS

1.1. In this Agreement the following definitions apply:

"Assignment" means the period during which the Contractor is engaged by the Employment Business;

"Assignment Details Form" means written confirmation of Assignment details set out in clause 6.2;

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended);

"Confidential Information" shall mean any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the Employment Business or their business or affairs (including but not limited to this Agreement, 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, the Contractor or any third party in relation to the Assignment by the Employment Business whether before or after the date of this Agreement together with any reproductions of such information in any form or medium or any part(s) of such information;

"Contractor Staff" means such of the Contractor's employees, officers or representatives supplied to provide the Contractor Services;

"Engagement" means the engagement of the Contractor or the services of any Contractor Staff, directly on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or through any other employment business or any other engagement, and "Engage", "Engages" and "Engaged" shall be construed accordingly;

"Minimum Rate" means £[x per hour/per day] being the minimum rate of pay that the Employment Business reasonably expects to achieve, for all work performed by the Contractor; (**this is a legal requirement**).

"Type of Work" means the supply of Recruitment Services for the Employment Business.

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

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

2. THE CONTRACT

- 2.1. This Agreement together with any applicable Assignment Details Form ("**Agreement**") constitutes the entire agreement between the Employment Business and the Contractor and governs all Assignments undertaken by the Contractor. However no contract shall exist between the Employment Business and the Contractor between Assignments.
- 2.2. During an Assignment the Contractor will be engaged on a contract for services by the Employment Business on the terms set out in this Agreement. For the avoidance of doubt this Agreement shall not be construed as a contract of employment between any Contractor Staff or representative of the Contractor supplied to carry out the Assignment, and any of the liabilities of an employer arising out of the Assignment shall be the liabilities of the Contractor.
- 2.3. No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between the Employment Business and the Contractor and set out in writing and a copy of the varied terms is given to the Contractor stating the date on or after which such varied terms shall apply.
- 2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973).

3. RELATIONSHIP BETWEEN THE EMPLOYMENT BUSINESS AND THE CONTRACTOR

- 3.1. The Employment Business will engage the Contractor performing the agreed Type of Work. The Contractor shall not be obliged to accept an Assignment offered by the Employment Business.
- 3.2. The Contractor acknowledges that the nature of the work means that there may be periods when no suitable work is available and agrees that:
 - 3.2.1. suitability of the work to be offered shall be determined solely by the Employment Business;
 - 3.2.2. the Employment Business shall incur no liability to the Contractor should it fail to offer opportunities to work to the Contractor.
- 3.3. The Contractor acknowledges to the Employment Business that its services are supplied to the Employment Business as an independent contractor and that accordingly the responsibility of complying with all statutory and legal requirements relating to the Contractor Staff (including the payment of taxation and compliance with the immigration laws applicable to the jurisdiction in which the Contractor Services are provided) shall fall upon and be discharged wholly and exclusively by the Contractor.
- 3.4. Nothing in this Agreement shall render any member of the Contractor Staff an employee of the Employment Business. The Contractor shall ensure that none of the Contractor Staff holds themselves out as an employee of the Employment Business. In the event that any person should seek to establish any liability or obligation upon the Employment Business on the grounds that the Contractor Staff are an employee/employees of the Employment Business, the Contractor shall upon demand indemnify the Employment Business and keep it indemnified in respect of any such liability or obligation and any related costs expenses or other losses which the Employment Business shall incur.

4. WARRANTIES PROVIDED BY THE CONTRACTOR

- 4.1. The Contractor warrants to the Employment Business that:
 - 4.1.1. by entering into and performing its obligations under this Agreement it will not thereby be in breach of any obligation which it owes to any third party;
 - 4.1.2. the Contractor Staff have the necessary skills and qualifications to provide the Contractor Services; and
 - 4.1.3. the Contractor is not a 'managed service company' as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003 but that it is a personal service company which is compliant in all respects with IR35.
- 4.2. The Contractor shall procure that the Contractor Staff, any sub-contractor or assignee providing the Contractor Services warrant that they are not and do not operate as 'managed service companies'

as defined in section 61B of the Income Tax (Earnings and Pensions) Act 2003 but that they are personal service companies which are compliant in all respects with IR35.

5. CONTRACTOR'S OBLIGATIONS

- 5.1. The Contractor agrees on its own part and on behalf of the Contractor Staff if it accepts any Assignment offered by the Employment Business:
 - 5.1.1. to co-operate with reasonable instructions and accept the direction of any responsible person in the organisation within the scope of the Assignment;
 - 5.1.2. to observe any relevant rules and regulations of the establishment or the premises where the Contractor Services are being performed to which attention has been drawn or which the Contractor might reasonably be expected to ascertain; including but not limited to those relating to health and safety to the extent that they are reasonably applicable to the Contractor and the Contractor Staff;
 - 5.1.3. to take all reasonable steps to safeguard its own safety, the safety of the Contractor Staff and the safety of any other person who may be affected by the actions of the Contractor Staff whilst on the Assignment;
 - 5.1.4. to comply with the Data Protection Act 1998 in respect of any personal data which the Contractor is granted access to for the purpose of or by reason of the performance of the Contractor Services;
 - 5.1.5. not at any time divulge to any person, nor use for its own or any other person's benefit, any Confidential Information relating to the Employment Business' employees, business affairs, transactions or finances;
 - 5.1.6. not to engage in any conduct detrimental to the interests of the Employment Business which includes any conduct which could bring the Employment Business into disrepute and/or which results in the loss of custom or business by the Employment Business;
 - 5.1.7. not to sub-contract or assign to any third party any of the Contractor Services which it is required to perform under any Assignment;
 - 5.1.8. to furnish the Employment Business with any progress reports as may be requested from time to time;
 - 5.1.9. to notify the Employment Business forthwith in writing if it should become insolvent, or if any of the arrangements set out in clauses 9.2.5 to 9.2.7 apply; and
 - 5.1.10. to comply with all the requirements of VAT legislation and the Companies Acts.
- 5.2. If the Contractor Staff is unable for any reason to provide the Contractor Services during the course of an Assignment, the Contractor should inform the Employment Business as soon as possible.
- 5.3. If, either before or during the course of an Assignment, the Contractor becomes aware of any reason why it or the Contractor Staff supplied to perform the Contractor Services may not be suitable for an Assignment, the Contractor shall notify the Employment Business without delay.
- 5.4. The Contractor acknowledges that any breach of its obligations set out in this clause may cause the Employment Business to suffer loss and that the Employment Business reserves the right to recover such losses from the Contractor.

6. OBLIGATIONS OF THE EMPLOYMENT BUSINESS

- 6.1. Throughout the term of this Agreement the Employment Business will pay the Contractor the Contractor Fees in accordance with clause 8 below in respect of the provision of the Contractor Services.
- 6.2. At the same time as an Assignment is offered to the Contractor the Employment Business shall provide the Contractor with an Assignment Details Form setting out the following:
 - 6.2.1. the date the Assignment is to commence and the duration or likely duration of the Assignment;

- 6.2.2. the Type of Work, location and hours during which the Contractor would be required to provide the Contractor Services;
 - 6.2.3. the Actual Rate of Pay and any expenses payable by or to the Contractor;
 - 6.2.4. any risks to health and safety known to the Employment Business in relation to the Assignment and the steps the Employment Business has taken to prevent or control such risks;
 - 6.2.5. what experience, training, qualifications and any authorisation required by law or a professional body the Employment Business considers necessary or which are required by law to work in the Assignment;
 - 6.2.6. the intervals of payment; and
 - 6.2.7. any length of notice that the Contractor would be entitled to give and receive to terminate the Assignment.
- 6.3. 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:
- 6.3.1. the Contractor is being offered an Assignment in the same position as one in which the Contractor had previously been supplied within the previous 5 business days and such information has already been given to the Contractor; or
 - 6.3.2. subject to clause 6.4, the Assignment is intended to last for 5 consecutive working days or less and such information has previously been given to the Contractor and remains unchanged, the Employment Business needs only to provide written confirmation of the place of work and the likely duration of the Assignment.
- 6.4. Where the provisions of clause 6.3.2 are met but the Assignment extends beyond the intended 5 consecutive working day period, the Employment Business shall provide such information set out in clause 6.2 to the Contractor in paper or electronic form within 8 days of the start of the Assignment.

7. INVOICING

- 7.1. At the end of each period of an Assignment the Contractor shall deliver to the Employment Business an invoice from the Contractor for the amount due from the Employment Business to the Contractor for the time worked in that period. Such invoice should bear the Contractor's name, the name of the Contractor Staff who provided the Contractor Services, the Contractor's company registration number and VAT number, and should state any VAT due on the invoiced sum.
- 7.2. Subject to the Contractor complying with the provisions of this clause 7 the Employment Business shall pay the Contractor for all hours.
- 7.3. The Employment Business shall make no payment to the Contractor for hours not worked by the Contractor staff

8. CONTRACTOR FEES

- 8.1. Subject to the receipt of the Contractor's invoice in accordance with clause 7 above, the Employment Business will pay the Contractor Fees within 7 days of receipt of the Contractor's invoice. The Employment Business shall pay to the Contractor the Actual Rate of Pay which shall be notified on a pre-agreed per Assignment basis.
- 8.2. The Contractor shall be responsible for the deduction of any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of the Contractor Staff [including any social fund contributions payable in any other Member State pursuant to a valid A1, E101 or E102 Certificate issued to any of the Contractor Staff] for any Assignment.
- 8.3. All payments due from the Employment Business will be made to the Contractor and not to any third party or member of the Contractor Staff, any sub-contractor or assignee.

- 8.4. The Employment Business shall not be obliged to pay the Contractor for any periods during which the Contractor Services are not provided, whether this is due to the Contractor being unable to provide the Contractor Services or otherwise in respect of holidays, illness or absence.
- 8.5. The Contractor shall bear the cost of any training which the Contractor Staff may require in order to perform the Contractor Services.

9. TERM AND TERMINATION

- 9.1. An Assignment may be terminated by either the Employment Business or the Contractor by giving the other party in writing the period of notice specified in the relevant Assignment Details Form. This will normally be around 4 weeks depending on the particulars of the engagement.
- 9.2. Notwithstanding clauses 9.1 and 9.3 of this Agreement, the Employment Business may without notice and without liability instruct the Contractor to cease work on an Assignment at any time, where:
 - 9.2.1. the Contractor has acted in breach of the rules and regulations applicable; or
 - 9.2.2. the Contractor has committed any serious or persistent breach of any of its obligations under this Agreement; or
 - 9.2.3. the Employment Business reasonably believes that the Contractor has not observed any condition of confidentiality from time to time; or
 - 9.2.4. the Employment Business is dissatisfied with the Contractor's provision of the Contractor Services and has terminated the Assignment; or
 - 9.2.5. the Contractor 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
 - 9.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Contractor; or
 - 9.2.7. an order is made for the winding up of the Contractor, or where the Contractor 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
 - 9.2.8. the Contractor or any member of the Contractor Staff is suspected of any fraud, dishonesty or serious misconduct; or
 - 9.2.9. the Contractor is unable to perform the Contractor Services for 1 week or more.
- 9.3. The Contractor acknowledges that the continuation of an Assignment is subject to and conditioned by the continuation of the contract entered into with the Employment Business.
- 9.4. Failure by the Contractor to give notice of termination as shall constitute a breach of contract and shall entitle the Employment Business to claim damages from the Contractor for any resulting loss suffered by the Employment Business.

10. INTELLECTUAL PROPERTY RIGHTS

The Contractor acknowledges that all copyright, trademarks, patents and other intellectual property rights deriving from the Contractor Services during the Assignment shall belong to the Employment Business. Accordingly the Contractor shall execute all such documents and do all such acts as the Employment Business shall from time to time require in order to give effect to its rights pursuant to this clause.

11. CONFIDENTIALITY

- 11.1. In order to protect the confidentiality and trade secrets of the Employment Business and without prejudice to every other duty to keep secret all information given to it or gained in confidence the Contractor agrees on its own part and on behalf of the Contractor Staff as follows:

- 11.1.1. not at any time whether during or after an Assignment (unless expressly so authorised by the Employment Business as a necessary part of the performance of its duties) to disclose to any person or to make use of any of the trade secrets or the Confidential Information of the Employment Business with the exception of information already in the public domain;
- 11.1.2. to deliver up to the Employment Business (as directed) at the end of each Assignment all documents and other materials (and all copies) which are in its possession including documents and other materials created by it or the Contractor Staff during the course of the Assignment; and
- 11.1.3. not at any time to make any copy, abstract, summary or précis of the whole or any part of any document or other material except when required to do so in the course of its duties under an Assignment in which event any such item shall belong to the Employment Business as appropriate.

12. LIABILITY

The Contractor shall be liable for any loss, damage or injury to any party resulting from the deliberate and/or negligent acts or omissions of the Contractor or Contractor Staff during an Assignment; and

13. INDEMNITY

The Contractor shall indemnify and keep indemnified the Employment Business against any and all losses, costs, damages or expenses suffered or incurred by the Employment Business by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, Her Majesty's Revenue and Customs and any successor, equivalent or related body pursuant to any of the provisions of Chapter 9 and/or section 688A of the Income Tax (Earnings and Pensions) Act 2003 and/or any supporting or consequential secondary legislation relating thereto).

14. SEVERABILITY

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 terms, which shall continue to be valid to the fullest extent permitted by applicable laws.

15. NOTICES

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. 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.

16. GOVERNING LAW AND JURISDICTION

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

Signed on behalf of the Employment Business

Signed on behalf of (name of limited company) Ltd (the Contractor)

Authorised person – Name:

I am authorised to sign these Terms for and on behalf of the Contractor. Date._____