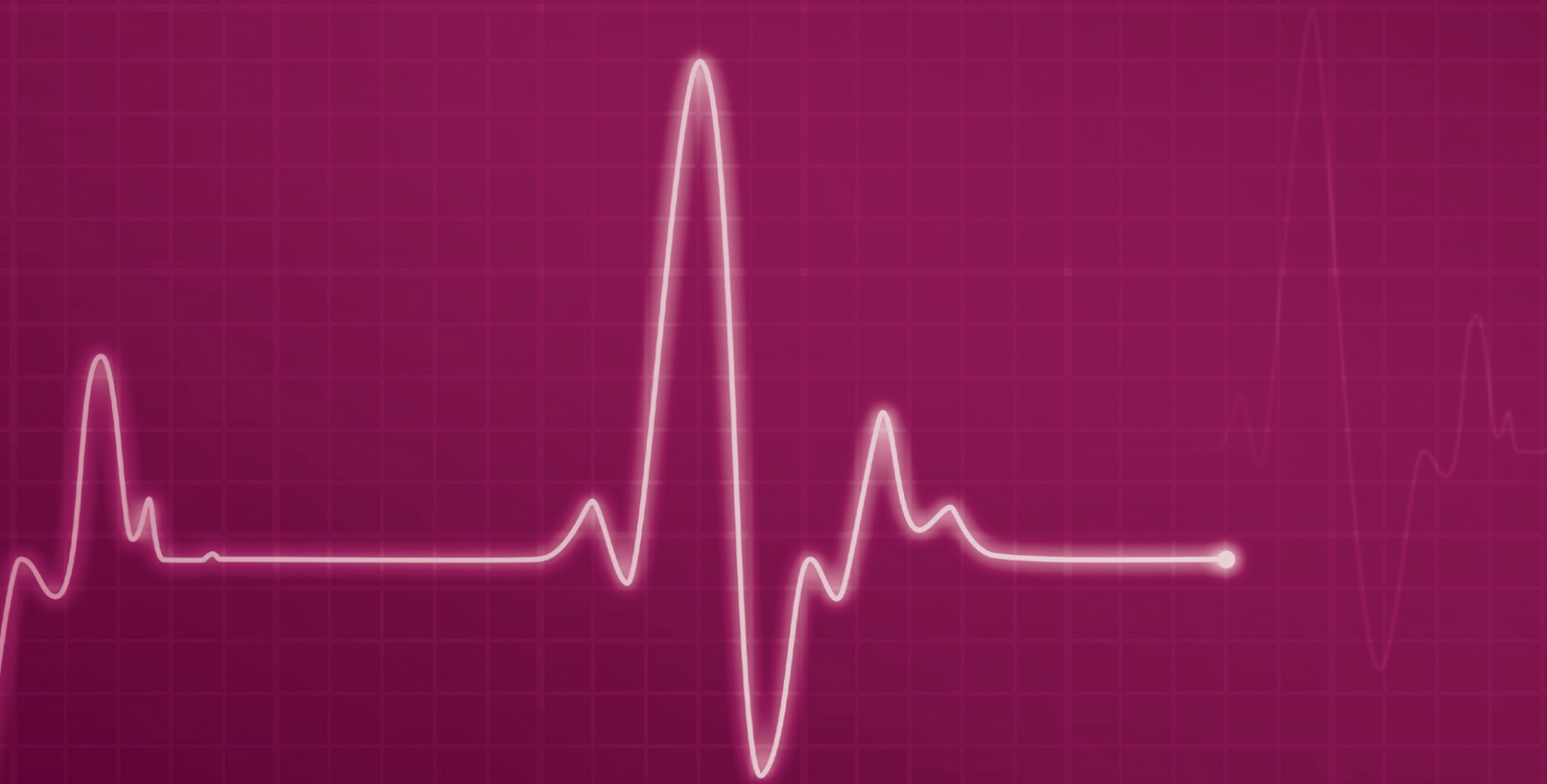


NursingDirect Client
Terms & Conditions



T: 0330 555 5000
www.nursingdirect.co.uk

NursingDirect

NursingDirect Ltd terms of business for the provision of temporary staff in the course of employment business.

1. Definitions

I. DEFINITIONS

In these Terms of Business the following definitions apply:

"Affiliate" means in relation to the Client, any subsidiary or holding company of the Client or any subsidiary of any such holding company;

"Assignment" means each period during which the Temporary Worker is supplied to render services to a Client;

"Agency Workers Regulations" means the Agency Workers Regulations 2010

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

"Calendar Weeks" means any period of seven days starting with the same day as the first day of the Initial Assignment;

"Client" means the person, firm or corporate body together with any Affiliate to whom the Temporary Worker is supplied or introduced;

"Comparable Employee" means an employee of the Client who:

- (a) works for and under the supervision of the Client and is engaged in the same or broadly similar work as the Temporary Worker having regard, where relevant, to whether the employee and the Temporary Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Temporary 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

"Employment Business" means NursingDirect Ltd whose registered office is at NWS House, 1 High Street, Purley, Surrey CR8 2AF;

"Engages/Engaged/Engagement" means the engagement, employment or use of the Temporary Worker directly by the Client or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Temporary Worker is an officer or employee;

"Introduction Date" The date the Employment Business Introduced the Temporary Worker to the Client;

"Introduction" means (i) the Client's or any third party's interview of a Temporary Worker in person or by telephone, following the Client's instruction to the Employment Business to supply a Temporary Worker; or (ii) the passing to the Client or any third party of a curriculum vitae or information which identifies the Temporary Worker and

"Introduced" shall be construed accordingly;

"Initial Assignment" means:

- (a) the relevant Assignment; or
- (b) if, prior to the relevant Assignment:
 - (i) the Temporary Worker has worked in any assignment in the same role with the relevant Client as the role in which the Temporary Worker works in the relevant Assignment; and
 - (ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Temporary Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client

"Qualifying Period" means 12 continuous Calendar Weeks during the whole or part of which the Temporary Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client in the same role as further defined in Regulation 7 of the Agency Workers Regulations;

"Relevant Pay" means any sum payable including any fee, bonus, commission, holiday pay, or other emoluments as further defined in Regulation 6 of the Agency Workers Regulations

"Relevant Period" means the later of the period of eight weeks after the last working day of the Assignment; or the period of 14 weeks after the first working day of the Assignment. When determining the first working day of the Assignment, any previous supply of the Temporary Worker to the Client which occurred more than 42 calendar days before the current Assignment shall not be taken in to account;

"Relevant Terms and Conditions" means terms and conditions relating to: Relevant Pay; the duration of working time; night work; rest periods; rest breaks; and annual leave that are ordinarily included in the contracts of employees or workers (as appropriate) of the Client whether by collective agreement or otherwise and including (for the avoidance of

doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation

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

"Temporary Work Agency" means 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: supplying individuals to work temporarily for and under the supervision and direction of hirers; or 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.

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

"Temporary Worker" means as defined in Regulation 3 (the meaning of an agency worker) of the Agency Workers Regulations;

"Transfer Fee" means the fee payable in accordance with clause 8.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

"Working Day" means every day excluding Saturday, Sunday and public or Bank holidays in England;

"Working Time Regulations" means the Working Time Regulations 1998. Unless the context otherwise requires, references to the singular include the plural. The headings contained in these Terms are for convenience only and do not affect their interpretation.

2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Business and the Client for the supply of the Temporary Worker's services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of an Introduction and/or Engagement of the Temporary Worker or the passing of any information about the Temporary Worker to the Client and/or any third party at the request of the Client.
- 2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.
- 2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.
- 2.4. Each Assignment shall be deemed a separate contract by the Client to purchase services on these Terms.

3. CHARGES

- 3.1. The Client agrees to pay such hourly or daily charges of the Employment Business as shall be notified to and agreed with the Client. The hourly charges are calculated according to the number of hours worked by the Temporary Worker (to the nearest quarter hour) and comprise mainly the Temporary Worker's pay but also include the Employment Business' commission calculated as a percentage of the Temporary Worker's pay, employer's National Insurance contributions, working time directive and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable.
- 3.2. VAT will be charged on invoices where applicable and at the prevailing rate. The Employment Business reserves the right to recover additional VAT on an invoice even if already paid by the client where new guidance or legislation is issued by HMRC pertaining to a change in VAT status or application. In cases where VAT is repayable back to the client then this will be repaid upon receipt by the Employment Business from HMRC.
- 3.3. The charges are invoiced to the Client on a weekly basis and are payable by the Client within 14 days of the date of invoice. The Employment Business reserves the right to charge interest on a daily basis on any overdue amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.4. The Client shall endorse the time sheet pertaining to each Assignment on a weekly basis or at the end of the Assignment (if completed before the end of the week). The Client shall

be solely responsible to ensure that all timesheets are accurate and properly endorsed by the Client's authorised representative and shall be deemed conclusive acceptance of the Services provided by the Temporary Worker and shall be payable without reference to any other services provided or due to be provided by the Employment Business. The Employment Business may exclusively rely on the timesheets when determining the Remuneration and fee due to the Employment Business.

- 3.5. Should the Client need to cancel a booking then the Client shall use reasonable endeavours to notify the Employment Business of its wish to cancel a particular booking at least two (2) hours before such Agency Worker is due to commence the assignment. If the Client fails to provide the Employment Business with such notice then the Client shall be liable to pay the Employment Business 50 percent of the value of the first booked shift at the Contract Price (as a genuine pre-estimate of the losses incurred by the Employment Business in such circumstances) related to the provision of those particular Services. If the Client fails to provide the Employment Business with such notice specified above and the Agency Worker arrives at the Client's premises to commence the delivery of the Services and that Agency Worker is no longer required by the Client, the Client shall be liable to pay the Employment Business 100 percent of the value of the first booked shift at the Contract Price (as a genuine pre-estimate of the losses incurred by the Employment Business in such circumstances) related to the provision of those particular Services.
- 3.6. It is the responsibility of the client to specify a banding of nurse on the booking request. If this is not specified or unclear then General nurses will be provided at Band 5 level, Critical care nurses (inc ITU, A&E, NICU, PICU & Paeds) will be provided at Band 6 level, Midwives at Band 6 and mental health nurses at Band 5.
- 3.7. Without prejudice to the provisions for the accrual of interest on unpaid invoiced amounts in accordance with clause 3.3 above, should the Client dispute an invoice, the Client must notify the Employment Business immediately in writing or in any event within 14 days of the date of the invoice. If the Employment Business does not receive such notification from the Client within the specified period, the Client shall pay the full amount of the invoice.
- 3.8. Where the Client disputes part of an invoice, the undisputed part shall be paid by the Client.
- 3.9. There are no rebates payables in respect of the charges of the Employment Business.
- 3.10. The Client agrees to pay the Transfer Fees in accordance with clause 8 and 9.
- 3.11. The Client agrees to indemnify the Employment Business against all costs and expenses incurred in recovering monies due to the Employment Business by the Client in any event.
- 3.12. The Client hereby waives all and any future claims and rights of set off against any payment for Services provided or any payment due under this agreement and agrees to pay the charges due to the Employment Business and all other amounts regardless of any equity, set off or crossclaim on the part of the Client against the Employment Business.
- 3.13. The Employment Business reserves its right to vary its charges for Services. The amended charge rate shall be effective upon the Client being given 30 days written notice stating the cause and manner of calculation of the new charge.
- 3.14. In addition to the charges calculated in accordance with this clause 3, the Client will pay the Employment Business:
 - 3.14.1 An amount equal to any bonus that the Client awards to the Temporary Worker in accordance with clause 6.13 immediately following any such award and the Employment Business will pay any such bonus to the Temporary Worker. For the avoidance of doubt, the Client will also pay, if applicable, any employer's National Insurance Contributions and the Employment Business's commission on the bonus (calculated using the same percentage rate as that used under the Original Agreement) in addition to any bonus payable to the Temporary Worker;
 - 3.14.2 An amount equal to any paid holiday leave to which the Temporary Worker is entitled under the Working Time Regulations and, where applicable, the Agency Workers Regulations and which is accrued during the course of a Assignment; and
 - 3.14.3 Any other amounts relating to the Relevant Terms and Conditions to which the Temporary Worker will be entitled under the Agency Workers Regulations, where applicable.
- 3.15. The Employment Business reserves the right to vary the charges under the Original Agreement agreed with the Client by giving written notice to the Client:
 - 3.15.1 In order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Agency Workers Regulations; and/or
 - 3.15.2 If there is any variation in the Relevant Terms and Conditions.

4. RECRUITMENT SERVICES

- 4.1. When making an Introduction of a Temporary Worker to the Client the Employment Business shall inform the Client of the identity of the Temporary Worker; that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Temporary Worker will be employed by the Employment Business under a contract of service or apprenticeship or a contract for services; and that the Temporary Worker is willing to work in the Assignment.
- 4.2. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following, save where the Temporary Worker is being Introduced for an Assignment in the same position as one in which the Temporary Worker had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

5. SPECIAL SITUATIONS

- 5.1. Where the Temporary Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more Vulnerable Persons, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client:
 - Copies of any relevant qualifications or authorisations of the Temporary Worker, and
 - Two references from persons not related to the Temporary Worker who has agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Temporary Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.
- 5.2. The Hirer shall advise the Employment Business at the time of instructing the Employment Business to supply a Temporary Worker whether during the course of the Assignment, the Temporary 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 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.
- 5.3. The Hirer shall assist the Employment Business by providing any information required to allow the Employment Business to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable and to allow the Employment Business to select a suitable Temporary Worker for the Assignment.
- 5.4. In particular in the event that the Hirer removes a Temporary Worker from an Assignment in circumstances which would require the Employment Business to provide information to the Independent Safeguarding Authority (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007, the Hirer will provide sufficient information to the Employment Business to allow it to discharge its statutory obligations.

6. CLIENT OBLIGATIONS AND ACKNOWLEDGMENT

- 6.1. At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Client shall sign the Employment Business' time sheet verifying the number of hours worked by the Temporary Worker during that week.
- 6.2. Signature of the time sheet by a representative of the Client is confirmation of the number of hours worked and acceptance of these terms and conditions. If the Client is unable to sign a time sheet produced for authentication by the Temporary Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion no more than 5 working days with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Temporary Worker. Failure to sign the time sheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.
- 6.3. The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Temporary Worker. In cases of unsuitable work the Client should apply the provisions of clause 11.1 and 11.2 below.
- 6.4. The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Temporary Worker fails to attend work or notifies the Client that the Temporary Worker is unable to attend work for any reason.
- 6.5. Temporary Workers supplied by the Employment Business are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision, direction and control of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible for all acts, errors or omissions of the Temporary Worker, whether wilful, negligent or otherwise as though the Temporary Worker was on the payroll of the Client.
- 6.6. Unless otherwise agreed in writing by the Employment Business, the Employment Business shall not be responsible for the costs of any telephone bills, meals, accommodation or any other charges which the Temporary Worker incurs during the Assignment.
- 6.7. The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Temporary Worker for the Temporary Worker to fill the Assignment.
- 6.8. The Client will also comply in all respects with all statutes including, for the avoidance of doubt, the Working Time Regulations, Health and Safety At Work Act etc, by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.
- 6.9. The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Temporary Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.
- 6.10. The Client will ensure that from Working Day 1 of the Assignment the Temporary Worker has the right to be treated no less favourably than a Comparable Employee or worker of the Client in relation to:
 - 6.10.1. The collective facilities and amenities (e.g. canteen, childcare facilities and transport services) provided by the Client (unless the Client can justify less favourable

- treatment on objective grounds); and
- 6.10.2 The right to be informed by the Client of any relevant vacant posts with the Client and giving the Temporary Worker the same opportunity as a comparable employee or worker of the Client to find permanent employment with the Client. This does not mean however that the Inscope Temporary Worker is entitled to be employed by the Client.
- 6.11 The Client acknowledges that they will be liable for any failure to comply with its obligations in Clause 6.10.
- 6.12 To enable the Employment Business to comply with its obligations under the Agency Workers Regulations, the Client undertakes as soon as possible prior to the commencement of each Assignment and/or during each Assignment (as appropriate) and/or at any time at the Employment Business's request:
- 6.12.1 To inform the Employment Business of any Calendar Weeks since 1 October 2011 in which the relevant Temporary Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- 6.12.2 If, since 1 May 2015, the Temporary Worker has worked in the same or a similar role with the Client via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Client via any third party during the relevant Assignment, to provide the Employment Business with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Employment Business;
- 6.12.3 To inform the Employment Business if the Temporary Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
- 6.12.3.1 Completed two or more assignments with the Client;
- 6.12.3.2 Completed at least one assignment with the Client and, where appropriate, one or more earlier assignments with any member of the Client's group; and/or
- 6.12.3.3 Worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role;
- 6.12.4 Save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to:
- 6.12.4.1 Provide the Employment Business with details, written or otherwise, of the Relevant Terms and Conditions of the Temporary Worker would be entitled to for doing the same job if the Temporary Worker had been recruited directly by the Client as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee;
- 6.12.4.2 Inform the Employment Business in writing, or otherwise, whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;
- 6.12.4.3 If the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Employment Business with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
- 6.12.4.4 Inform the Employment Business in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 6.12.4.5 Save where the Temporary Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Employment Business with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 6.12.5 The Client acknowledges that once the Qualifying Period has elapsed, a pregnant Temporary Worker has additional rights and the Client agrees to:
- 6.12.5.1 Pay for time off for the pregnant Temporary Worker to attend ante-natal medical appointments and ante-natal classes;
- 6.12.5.2 Offer suitable alternative work (paid at the same rate as the original assignment) if the Client cannot make reasonable adjustments and the pregnant Temporary Worker cannot complete the original Assignment for health and safety reasons; and
- 6.12.5.3 Pay the pregnant Temporary Worker for the remaining duration of the original assignment if the Client cannot find suitable alternative work.
- 6.13 In addition, for the purpose of awarding any bonus to which the Temporary Worker may be entitled under the Agency Workers Regulations, the Client will, if required:
- 6.13.1 Integrate the Temporary Worker into its relevant performance appraisal system;
- 6.13.2 Assess the Temporary Worker's performance;
- 6.13.3 Provide the Employment Business with copies of all documentation relating to any appraisal of the Temporary Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
- 6.13.4 Provide the Employment Business with all other assistance the Employment Business may request in connection with the assessment of the Temporary Worker's performance for the purpose of awarding any bonus.
- 6.14 The Client will comply with all the Employment Business' requests for information and any other requirements to enable the Employment Business to comply with the Agency Workers Regulations.
- 6.15 The Client warrants that:
- 6.15.1 All information and documentation supplied to the Employment Business in accordance with clauses 6.12, 6.13 and 6.14 is complete, accurate and up-to-date; and
- 6.15.2 It will, during the term of the relevant Assignment, immediately inform the Employment Business in writing of any subsequent change in any information or documentation provided in accordance with clauses 6.12, 6.13 and 6.14;

- 6.16 Without prejudice to clause 10.7 and 10.8, the Client shall inform the Employment Business in writing of any:
- 6.16.1 Oral or written complaint the Temporary Worker makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations; and
- 6.16.2 Written request for information relating to the Relevant Terms and Conditions that the Client receives from the Temporary Worker as soon as possible but no later than 7 calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client and the Client will take such action and give such information and assistance as the Employment Business may request, and within any timeframe requested by the Employment Business, in order to resolve any such complaint or to provide any such information in a written statement to the Temporary Worker within 28 days of the Client's receipt of such the Client will provide the Employment Business with a copy of any such written statement.

7. PAYMENT OF THE TEMPORARY WORKER

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

8. TEMP-TO-TEMP AND TEMP-TO-PERM

- 8.1 If during or following the supply of a Temporary Worker by the Employment Business to the Client the Client Engages the Temporary Worker within the Relevant Period either (1) directly or (2) pursuant to being supplied by another employment business the Client shall be liable to pay a Transfer Fee to the Employment Business.
- 8.2 All Transfer Fees are calculated as follows: 25% of the monthly Remuneration x 12, or if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300 times the hourly charge.
- 8.3 No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee due where applicable.
- 8.4 The Transfer Fee shall not be payable if the Client gives written notice to the Employment Business that it intends to continue the hire of the Temporary Worker for a further period of six months (Extended Assignment) before it Engages the Temporary Worker other than through the Employment Business.
- 8.5 Where the Client decides to have the Temporary Worker supplied by the Employment Business for the Extended Assignment:
- 8.5.1 The Temporary Worker charges payable by the Client during the Extended Assignment shall be those applicable immediately before the Employment Business received the Client's notice of election.
- 8.5.2 At the end of the Extended Assignment, the Client may Engage the Temporary Worker without paying the Transfer Fee.
- 8.5.3 If the Client chooses an Extended Assignment, but Engages the Temporary Worker before the end of the Extended Assignment, the Transfer Fee may be charged by the Employment Business and may at the Employment Business's discretion be reduced proportionately to reflect the amount of the Extended Assignment charges paid or payable by the Client.
- 8.6 Where there has been an Introduction but no supply the Client shall pay the Employment Business a Transfer Fee as set out in clause 8.2, if within 6 months of the Introduction date the Client Engages the Temporary Worker unless the Client chooses an Extended Assignment in accordance with clause 8.4 in which case the provisions of clause 8.5 shall apply.
- 8.7 The Client acknowledges that failure to notify NursingDirect Ltd in the event that the Client employs a worker pursuant to Clause 8.1 or 9.1 will cause NursingDirect Ltd to sustain losses over and above the value of the fees set out in Clause 8.2. In such an event the Client shall pay NursingDirect Ltd a further administrative fee of £2,000 plus VAT, which the parties agree is a reasonable pre-estimate of the losses suffered by NursingDirect Ltd as a result of the Client's failure to notify NursingDirect Ltd.

9. TEMP-TO-THIRD PARTY

- 9.1 If during or following the supply of a Temporary Worker by the Employment Business to the Client, the Client Introduces the Temporary Worker to a third party including any Affiliate of the Client which results in the Engagement of the Temporary Worker by the third party within the Relevant Period, the Client shall be liable to pay a Transfer Fee to the Employment Business in accordance with clause 8.2.
- 9.2 In the event that there is an Introduction of a Temporary Worker to the Client which does not result in the supply of that Temporary Worker by the Employment Business to the Client, but the Temporary Worker is Introduced by the Client to a third party which results in the Engagement of the Temporary Worker by the third party including any Affiliate of the Client within six months from the Introduction date the Client shall immediately notify the Engagement to the Employment Business and be liable to pay a Transfer Fee.

10. LIABILITY

- 10.1 Whilst reasonable effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Temporary Workers and further to provide them in accordance with the Client's booking details, the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Temporary Worker for all or part of the period of booking or from the negligence, dishonesty, misconduct or lack of skill of the Temporary Worker.

- 10.2. Temporary workers supplied by the Employment Business pursuant to these Terms are engaged under contracts for services. They are not the employees of the Employment Business but are deemed to be under the supervision and direction of the Hirer from the time they report to take up duties and for the duration of the Assignment. The Hirer agrees to be responsible for all acts, errors or omissions of the Nurse, whether wilful, negligent or otherwise as though the Nurse was on the payroll of the Hirer.
- 10.3. The Hirer shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Temporary Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Temporary Worker is to fill the Assignment.
- 10.4. The Hirer will also comply in all respects with all statutory provisions as are in force from time to time including, for the avoidance of doubt, but not limited to the Working Time Regulations, Health and Safety At Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, by-laws, codes of practice and legal requirements to which the Hirer is ordinarily subject in respect of the Hirer's own staff (excluding the matters specifically mentioned in clause 7 above), including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Temporary Worker during all Assignments.
- 10.5. The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with clauses 3, 6, 7 and/or as a result of any breach of these Terms by the Client.
- 10.6. The following provisions of this clause 10 set out the entire financial liability of the Employment Business (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 10.6.1. Any breach of this Agreement; and
- 10.6.2. Any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 10.7. All warranties, conditions and other terms implied by law are, to the fullest extent permitted by law, excluded from these Terms.
- 10.8. Nothing in these Terms excludes or limits the liability of the Employment Business for death or personal injury caused by the Employment Business negligence or for fraudulent misrepresentation.
- 10.9. Subject to clauses 10.4 and 10.5:
- 10.9.1. The Employment Business total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Assignment, shall not exceed 120% of the charges paid by the Client to the Employment Business in respect of the specific Assignment giving rise to the liability;
- 10.9.2. The Employment Business shall not be liable to the Client for any loss of profit, loss of business, depletion of goodwill, costs, expenses or any indirect or consequential loss or damage, whatsoever (howsoever caused) which arise out of or in connection with the Assignment.
- 10.10. Each party shall inform the other in writing of any AWR Claim which comes to the notice of the party 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 party.
- 10.11. If the Temporary Worker brings, or threatens to bring, any AWR Claim, the parties undertake to the other to take such action and give such information and assistance as the other party may request, and within any timeframe requested by the other party and at their own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

11. TERMINATION

- 11.1. The Client undertakes to supervise the Temporary Worker sufficiently to ensure the Client's satisfaction with the Temporary Worker's standards of workmanship. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment either by instructing the Temporary Worker to leave the Assignment immediately, or by directing the Employment Business to remove the Temporary Worker.
- 11.2. In accordance with clause 11.1, the Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Temporary Worker, provided that the Assignment terminates:
- 11.2.1. Within two hours of the Temporary Worker commencing the Assignment where the booking is for more than seven hours; or
- 11.2.2. Within one hour for bookings of seven hours or less; And also provided that notification of the unsuitability of the Temporary Worker is confirmed in writing to the Employment Business immediately and without delay and in any event within 24 hours of the termination of the Assignment.
- 11.3. The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Temporary Worker supplied to the Client is unsuitable for the Assignment and in those circumstances either the Client or the Employment Business may terminate the Assignment without prior notice and without liability.

- 11.4. The Client may terminate an Assignment other than pursuant to clause 11.1 provided it serves written notice to the Employment Business at least 48 hours prior to the commencement date of the Assignment. Such notice shall include details of the reasons for termination.
- 11.5. If the Client fails to notify the Employment Business in accordance with clause 11.4 above the Employment Business reserves the right to charge 100% of the daily and/or hourly rate that would have accrued to the Employment Agency had the Assignment commenced.
- 11.6. Without limitation the Client may by notice in writing immediately terminate an Assignment if the Employment Business shall:
- 11.6.1. Be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Employment Business within 14 days of receipt by the Employment Business of written notice from the Client specifying the breach and requiring its remedy;
- 11.6.2. Be grossly incompetent, guilty of gross misconduct and/or any serious or persistent negligence in the provision of Services;
- 11.7. The Client may not terminate the Assignment solely for the reason of the Temporary Workers absence due to illness or injury unless such illness or injury prevents the Temporary Worker from providing services pursuant to this Agreement to the Client for a consecutive period of one whole week (i.e. 5 working days) or for an aggregate period of two weeks (i.e. 10 working days) in any period of 12 calendar months.
- 11.8. The Employment Business may terminate the Assignment without liability by providing no less than 48 hours written notice to the Client prior to the commencement date of the Assignment.
- 11.9. Either party is entitled to terminate the Assignment immediately in the event that the other party ceases to trade or has a receiver appointed, or is insolvent or appoints or has an administrator appointed.

12. NOTICES

- 12.1. Any notice required to be given under these Terms, or in connection with the matters contemplated by these Terms, shall (except where specifically provided otherwise) be in writing and personally delivered, sent by pre-paid first-class post or by fax. Such notice shall be deemed to have been given on delivery at the relevant address or, if sent by first-class pre-paid post, two business days (that is, any day which is not a Saturday, Sunday or public holiday in the place at or to which the notice is left or sent) after the date of posting, or if sent by fax, when despatched, subject to confirmation of uninterrupted transmission by a transmission report.

13. WAIVER

- 13.1. No delay or failure by the Employment Business to exercise any of its powers, rights or remedies under these Terms will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing. The remedies provided in these Terms are cumulative and not exclusive of any remedies provided by law.

14. SEVERABILITY

- 14.1. If any part of these Terms is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the Terms which will continue to be valid and enforceable to the fullest extent permitted by law.

15. THIRD PARTIES

- 15.1. No person who is not a party to these Terms has any right to enforce its terms and shall have no right under the Contracts (Rights of Third Parties) Act 1999.

16. LAW

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