

TERMS AND CONDITIONS – PAYE Agency Workers

Worker: [Insert Worker Name & Address:] (“you”).

1. DEFINITIONS AND GENERAL

1.1 In these terms and conditions:

1.1.1 ‘AWR’ means the Agency Workers Regulations 2010 as amended and any succeeding legislation.

1.1.2 ‘Assignment’ means the services performed by You for a client for a period of time during which You are supplied by an employment business.

1.1.3 ‘Engage’ means to book or use Your services for the purpose of the Assignment and ‘Engagement’ shall have a related meaning.

1.1.4 ‘You’ means any individual supplied by Us to Our clients and ‘Your’ has a related meaning.

1.1.5 ‘the Parties’ is used to refer to You and Us, collectively.

1.1.6 ‘We’, ‘Us’, ‘Ourselves’ or similar words mean Accident and Emergency Agency Limited

1.1.7 ‘Qualifying Period’ means 12 continuous calendar weeks as defined in AWR.

1.1.8 ‘Group Company’ means (a) any individual, company, partnership, statutory body or other entity which from time to time controls the client, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is controlled by or is under common control with the client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006. For the purpose of this definition, control means the legal or beneficial ownership, whether directly or indirectly, of more than 50% of the issued share capital or a similar right of ownership or the power to direct or cause the direction of the affairs and/or general management of the entity.

1.2 These terms (together with any Booking Confirmation) set out the entire agreement between Us and shall govern all Assignments You undertake for Us. No contract exists between the Parties between Assignments. For the avoidance of any doubt, this agreement is a contract for services and not a contract of employment between the Parties or between You and the client.

1.3 If You accept an Assignment that We offer You, You shall be deemed to have accepted these terms and conditions whether or not You have signed the declaration at the bottom hereof.

1.4 In Our dealings with You We act as an employment business.

1.5 The headings contained herein are included for convenience only and shall not affect the interpretation of the contents hereof in any way.

1.6 No variation or alteration to these terms and conditions shall be valid unless approved by one of Our directors, in writing.

1.7 These terms and conditions are governed by the laws of England and Wales and are subject to the exclusive jurisdiction of the courts of those territories.

1.8 Any unenforceable or invalid term herein shall be deemed severed from the valid provisions which will remain in full force and effect.

1.9 These terms and conditions shall prevail over any other terms and conditions You may proffer.

1.10 No failure or delay by Us in exercising any right, power or privilege under this agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

1.11 Neither party shall have any liability under or be deemed to be in breach of this agreement for delays or failures in performance which result from circumstances beyond the reasonable control of that party.

1.12 This agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party’s behalf.

1.13 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this agreement is not intended to, and does not, give any person who is not party to it any right to enforce any of its provisions.

1.14 References to the AWR in these terms may only be relevant to Assignments that are subject to the AWR. Whether or not an Assignment is subject to the AWR will be determined by the specific circumstances of that Assignment. You must, however, provide Us with all the information that these terms and conditions require, whether or not You believe that an Assignment is subject to the AWR. This is necessary so that We can make Our own assessment of Our legal obligations and keep accurate records.

2. OUR OBLIGATIONS TO YOU

2.1 We shall use reasonable endeavours to seek Assignments for You that are relevant to

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Your skills and qualifications and of the type of work You indicated on Your application form that You wish to do. We shall determine, in Our sole and absolute discretion, Your suitability for any Assignment. We make no representation to You, however, that We will find a suitable position for You and You appreciate that there may be no work available for You. We are not obliged to offer You work and We shall incur no liability to You for not doing so.

2.2 You will be paid weekly in arrears directly into Your bank account. If We receive Your timesheet late, incomplete or unsigned, payment may be delayed. We shall be entitled to deduct any sums due to Us from the payment.

2.3 We will pay You for the hours You work irrespective of whether or not We recover any payment from Our client for Your work. Your pay is subject to those deductions for PAYE Income Tax, National Insurance contributions and any other amounts that We are required by law to make. We are not liable for payment if You book Yourself onto an Assignment without reference to Us.

2.4 You will be paid at the rate of pay agreed for the Assignment. Pay rates are determined by the profession You work within and the client You work with. Pay rates also include a payment in respect of accrued holiday pay. The scale of pay rates will be agreed on registration, and the actual rate together with the exact proportion of actual pay versus holiday pay comprising the pay rate, will be confirmed to You (i) in a rate schedule provided to You on registration (and on any pay rate change) and/or available from Your consultant upon request and/or (ii) on offer of Assignment and/or (iii) on your payslips. If You complete the Qualifying Period, You may be entitled to enhanced rates and/or benefits under the AWR.

2.5 We will confirm Your Assignment and all the details thereof, including Your rate of pay, to You as under 2.4. This booking confirmation, together with these terms and conditions records Our entire agreement with You. In the event that these terms and conditions conflict with the booking confirmation, these terms and conditions shall prevail.

2.6 The details of the Assignment that are confirmed to you may thereafter be changed only if the change is recorded in writing and signed by one of Our directors.

2.7 Subject to clause 2.8, We are not responsible for any personal injury or damage You may suffer whilst on the premises or property of the client, whilst acting on the client’s instructions, or whilst travelling to or from the property or premises of the client.

2.8 Our liability to You for any losses arising from Our (or Our employees’, subcontractors’ or agents’) breach of this agreement or of any statutory provision, negligence, misconduct or otherwise is limited to (i) the fees that are payable to You for the Assignment in respect of which Our liability to You arose; (ii) direct losses only. You agree to use Your reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with the Assignment. Our liability for death or personal injury arising from Our negligence and Our liability for Our fraud or fraudulent misrepresentation is not limited or excluded.

3. YOUR OBLIGATIONS TO US AND TO THE CLIENT

3.1 You are not obliged to accept any Assignment that We offer You, but if You do so then You agree to do so in accordance with the requirements of these terms and conditions. You agree to perform any Assignment with reasonable care and skill.

3.2 By accepting an Assignment, You agree that You are willing to work in that position.

3.3 You will not approach the client with any complaint or inquiry about Your remuneration without first approaching Us and allowing Us 30 days to respond thereto. We will then approach the client on Your behalf.

3.4 You are obliged to attend and complete Your Assignment whether or not You receive a written booking confirmation from Us.

3.5 You acknowledge that We may be entitled in certain circumstances to charge our client a fee if they (i) introduce you to a third party that employs or Engages you or if they (ii) Engage you directly or through another employment business. In the latter case, the client will have the option to agree a period of extended hire of You through Us, after which you may transfer to them without their paying a fee.

3.6 If You are offered an Assignment and You have previously worked in the same or similar role with the client through a third party after 1 October 2011 then You must inform Us immediately You become aware of this and, if possible, before the Assignment starts. You must provide us with full details of the work undertaken.

3.7 You must immediately inform Us if, since 1 October 2011, whether before any Assignment with a client starts and/or during that Assignment, You have either (i) completed 2 or more Assignments with that client; (ii) completed an Assignment with the client and another Assignment with one of the Group Companies of that client; and/or (iii) worked in more than 2 roles during an Assignment with that client and on at least 2 occasions that role was not the same role as the previous role.

3.8 If You consider that You have not or may not have received equal treatment under the AWR, You may raise this in writing with Us setting out as fully as possible the basis of Your concerns.

3.9 You must inform Us if the reason for Your not working during any break between

Assignments is due to one or a combination of any of the following reasons: sickness or injury; pregnancy, childbirth or maternity; for the purpose of taking time off or leave, whether statutory or contractual, to which You are otherwise entitled; due to Your being summoned for jury service; due to seasonal reduction in requirements for workers according to the client’s established custom and practice; or due to industrial action at the client’s workplace.

3.11 If the client requires You to work longer than the hours that are usual for their organisation in any given week, or in any event more than 37 hours in any given week You must notify Us as soon as reasonably practicable and in any event before the 37 hours of work are completed.

3.12 You shall co-operate with Us in the completion and renewal of all mandatory checks, including any in relation to Your right to work in the United Kingdom.

3.13 You shall inform Us immediately if You become aware of any reason why You may not be suitable for any Assignment.

4. PERFORMANCE OF THE ASSIGNMENT

- 4.1 You shall commence the Assignment punctually and conform to the normal work hours of the client unless We have expressly agreed otherwise with You and We have recorded Our agreement in writing.
- 4.2 You will co-operate with the client's staff and accept the supervision and instruction of any responsible person within their organisation.
- 4.3 You will observe the health and safety policy of the client and take all reasonable steps to safeguard Your own safety and the safety of any other person who may be present or affected by Your actions.
- 4.4 You will not smoke on the client's premises except where it is expressly permitted to do so.
- 4.5 You will wear any form of identification that We or the client require and display this on Your clothing at all times when You are on the client's premises.
- 4.6 Whilst carrying out Your Assignment, You will adhere to the terms of any generally accepted Codes of Professional Conduct that apply to Your profession such as in the administration of drugs and sterile techniques and, in particular, where relevant shall have regard to the guidance contained in the General Medical Council's publication 'Good Medical Practice' or codes of conduct for the NMC and HCPC relating to the conduct of practitioners.
- 4.7 You will not engage in any conduct detrimental to Our interests or to the interests of the client.

5. LIABILITY AND INSURANCE

- 5.1 Subject to 5.2 below, You are strongly recommended to take out public liability and professional indemnity insurance policies with reputable insurers to cover Your liabilities that may arise under or in connection with this agreement. This does not apply to healthcare assistants, care and support workers.
- 5.2 If You are a surgeon, physician, doctor, dentist, nurse or midwife or other Allied Healthcare professions (including Social Workers) then You must (at Your own expense) belong to and subscribe to and be insured by the Medical Defence Union or Medical Protection Society or other equivalent organisation (in the case of a surgeon, physician, doctor or dentist) or the Royal College of Nursing or other equivalent organisation (in the case of a nurse) or the Royal College of Midwives or other equivalent organisation (in the case of a midwife) or other similar insurance scheme and that the insurance scheme covers all Your liabilities which may arise under or in connection with this agreement. In the event that You do not have such insurance cover You must inform Us immediately. You shall be responsible for and shall indemnify Us for any loss, liability, costs (including legal costs), damages or expenses that We may incur arising directly or indirectly from Your failure to comply with the requirements of this clause.
- 5.3 The insurance cover referred to in clauses 5.1 and 5.2 shall not be less than £5 million (or £10 million in the case of doctors), unless We have agreed, in writing, that cover of a lesser amount is adequate in the circumstances.
- 5.4 You shall on request supply to Us the insurance certificate giving details of cover and/or evidence that the relevant premiums have been paid.
- 5.5 You shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if You are aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, You shall notify Us without delay.
- 5.6 You shall indemnify and keep indemnified Us against any loss, liability, costs (including legal costs), damages or expenses that We may incur arising directly or indirectly from (i) any failure by You to comply with Your obligations under this agreement; (ii) any negligent or fraudulent act or omission by You; (iii) disclosure by You of any Confidential Information; (iv) any employment related claim brought by You in connection with the Assignment.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 6.1 You will not disclose to any person other than a person authorised by the Client any information that You may have acquired during or in connection with an Assignment that is not already in the public domain, including but not limited to information concerning the Client's business, staff or procedures or the identity, medical condition, treatment or other personal details of any patient.
- 6.2 You shall deliver up to the client or to Us at the end of each Assignment all documents and other materials belonging to the client (and all copies), which are in Your possession or control including documents and materials that You may have created during the course of the Assignment.
- 6.3 The client is the sole owner of any work product, including any intellectual property rights thereto, created by You during the Assignment and You hereby assign to the client (where appropriate, by way of present assignment of future copyright) or (in any other case) You agree to assign to the client absolutely on demand, with full title guarantee and for no further consideration, all intellectual property rights in respect of such work product. Further, you waive all Your moral rights in regard thereto.

7. REQUIRED PERIOD OF NOTICE

- 7.1 In the event that You do not wish to complete the Assignment, You will give notice to Us as follows:

LENGTH OF ASSIGNMENT	REQUIRED NOTICE PERIOD
Up to 6 days	not less than 24 hours
1-4 weeks	2 clear working days
More than 4 weeks but not less than 3	5 clear working days
3-6 months	10 clear working days
More than 6 months	14 clear working days

- 7.2 In the event that You become aware that You are, due to an unforeseen event beyond Your control, unable to attend Your Assignment You will inform Us at the earliest possible opportunity and at least one hour before commencement of the Assignment or shift. In all other circumstances, You are required to work out Your Assignment until Your notice period is completed.
- 7.3 If You leave an Assignment without giving the required notice to Us We will hold You liable for any losses We or the Client may suffer as a result.
- 7.4 Nothing in this clause shall affect Your status as an agency worker.

8. INFORMATION WE REQUIRE FROM YOU

- 8.1 You are required to produce evidence of Your eligibility to work within the United Kingdom forthwith at Our request. In the event that Your circumstances change in any manner that might affect Your continued eligibility to work in this country, You will immediately inform Us of the change.
- 8.2 You consent to Our, Our subcontractors' or agents' and the client processing and storing Your personal data (within the European Economic Area or elsewhere) pursuant to this agreement.
- 8.3 You must furnish Us with proof of Your identity as well as evidence of Your experience, training and qualifications. We may request additional information from You and/or from any professional body to which You belong to determine Your suitability for an Assignment. You agree that We may share this information with the client. You agree that We may share this information and any sensitive personal data (as defined in the Data Protection Act 1998) we hold about You with the client or any Group Company of Ours or of the client, those who provide products or services to Us (such as advisers), regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of Us or of Our Group Companies or any part of Our business.

9. MISCONDUCT AND TERMINATION

- 9.1 You will immediately inform Us of any investigation concerning Your acts or omissions, any event that has resulted in disciplinary action being taken against You, any allegations of misconduct, or Your suspension or dismissal from any position in which You were working in Your professional capacity as a result of Your alleged misconduct. You will do this irrespective of whether or not You consider the allegations to have any foundation or substance.
- 9.2 We may, without incurring any liability to you, alter or cancel your Assignment.
- 9.3 Further, We may terminate this agreement immediately at any time and without notice.
- 9.4 Clauses 1.7, 1.8, 1.9, 1.10, 1.13, 2.2, 2.7, 2.8, 3.3, 3.5, 3.6, 3.7, 3.9, 4.7, 5, 6, 7.3, 8.2, 8.3, 10.3 and 14 and such other clauses which by implication have effect after termination shall survive termination of this agreement.

10. EXPENSES

- 10.1 Unless We agree otherwise and record that exceptional agreement in writing, You are responsible for the cost of Your own travel, meals, telephone calls, accommodation and any other business expenses. You must settle any amounts that You owe the client before You complete Your Assignment.
- 10.2 We will only reimburse expenses if We have agreed to do so in writing and when the expenses have been incurred wholly, necessarily and exclusively in order to perform Your Assignment.
- 10.3 Any payment We may make to You in respect of an expense claim that You present to Us will be made on the understanding that such amounts are paid as an advance only and that if subsequently the expense claim is not paid by the client for any reason We may reclaim these amounts from You.
- 10.4 We will report all expenses paid to You on Your P11d. Your P11d will be submitted to HMRC and is open to scrutiny. HMRC may reject any expenses that they do not consider have been wholly, necessarily and exclusively incurred in the course of Your performance of Your Assignment.

11. TIME SHEETS

- 11.1 Time spent travelling to and from the client's premises, lunch breaks and other rest breaks do not count as part of Your working time for purposes of preparing Your time sheet and the Working Time Regulations 1998 ('WTR').
- 11.2 At the end of each week of Your Assignment (or in the case of an Assignment of less than one week's duration, at the end of the Assignment) You shall present to the client for signature a time sheet or other written record of the hours You have worked during the preceding period. You will thereafter submit the document to Us.

12. LEAVE

- 12.1 For the purposes of calculating Your entitlement to leave, the leave year commences on 6 April. Under the WTR, You are entitled to 5.6 weeks' paid leave each leave year. For the avoidance of doubt, You may only take as many hours leave on any given day as You usually work in a day (or, if Your working hours vary, You may not take more hours leave on any given day than the average number of hours You have worked per day in the preceding 3 months) and You may only take as many days leave in any given week as there are working days in that week. All entitlement to leave must be taken during the course of the leave year in which it accrues and none may be carried forward to the next year. You agree that You must, in accordance with employment legislation, take Your accrued annual leave in any given holiday year and You will be required to formally confirm at regular intervals that You have taken Your holiday entitlement as part of Our compliance

processes. You must provide Us with information as to all periods of annual leave taken by You both during and between Assignments and We will review that information.

12.2 Once You have been engaged on an Assignment with Us the right to be paid leave begins on the first day of the Assignment. After that time, entitlement to paid leave accrues in proportion to the amount of time You have worked continuously on Assignment during the leave year.

12.3 The amount of the payment to which You become entitled in respect of such annual leave is calculated in accordance with and in proportion to the number of hours that You have worked continuously on Assignment. Payments for annual leave purposes are calculated on basic hours at basic rates of pay and will be paid alongside Your weekly pay as set out in clause 2.4 above. The accrued holiday pay paid to You will be confirmed i) in a rate schedule provided to You on registration (and on any pay rate change) and/or available on request from Your consultant and/or ii) on each booking confirmation and/or iii) on Your payslips.

12.4 You must give Us notice in writing of Your intention to take leave to which You are entitled and that notice should include the dates of Your intended absence. You must give Us notice of at least twice the length of the period for which You wish to take leave. Unless We inform You that it is not convenient for You to take leave on the requested dates, You shall be entitled to take up Your leave entitlement as notified.

12.5 Where a bank holiday or other public holiday falls during an Assignment and You do not work on that day, You must advise Us in advance that You wish to take paid leave on that day in accordance with paragraph 12.4 above.

12.6 None of the provisions of these terms and conditions regarding Your statutory entitlement to paid leave shall affect Your status as an agency worker.

13. EXCLUSION OF WORKING TIME REGULATIONS

13.1 You agree that the maximum working time specified in Regulation 4(1) and (2) of the Working Time Regulations 1998 shall not apply to this contract for services. You may withdraw Your consent to this at any time by giving three months' notice to Us, in writing.

14. PENSION

14.1 The Company operates a stakeholder pension arrangement which you will be eligible to join. Further details of the Scheme and the application form can be obtained from our payroll team. From 1st September 2013, the Company is required to automatically enrol eligible workers into a pension arrangement. You will therefore be automatically enrolled into a qualifying pension scheme if you are an eligible worker. You will have the right to opt out if you wish to do so.

14.2 Your participation in the scheme referred to in paragraph 14.1 above is subject to the rules and provisions of the scheme and any related contracts or policies of insurance in force from time to time. The Company reserves the right to amend or withdraw the scheme at any time.

15. DECLARATION

15.1 I confirm I have read the terms and conditions and agree to abide by them.

Candidate Name.....

Candidate Signature.....

Date.....