TERMS OF ENGAGEMENT FOR LOCUM DOCTORS OR MEDICAL PROFESSIONALS WORKING THROUGH A COMPANY PROVIDING MEDICAL SERVICES TO NHS ENTITIES

1. DEFINITIONS

1.1. In these terms and conditions (the Terms) unless the context otherwise requires:

**Agreement** means the agreement between the NHS Entity and the Company for the provision of the Medical Services incorporating these Terms and the details of Assignment provided by the Brookson portal used by the NHS Entity;

**Assignment** means the period of engagement of the Company to provide the Medical Services;

**Authorised Representative** means any employee, officer or representative of the NHS Entity authorised to sign a Doctor’s or Medical Professional’s timesheet;

**Business Day** means any day on which banks are generally open for business in the City of London (other than Saturdays, Sundays or public holidays) and the expression Business Days shall be construed accordingly;

**NHS Entity** means the NHS Trust, NHS Board, NHS Health Board or NHS hospital referred to in the details of Assignment provided by the Brookson portal used by the NHS Entity;

**Confidential Information** means (without limitation) lists or details of patients, service users, service providers, customers, suppliers and/or information relating to the working of any process or invention carried on or used by the NHS Entity, information relating to research, projects, secret formulae, processes, inventions, designs, know-how, discoveries, technical specifications and other technical information, accounts or financial dealings of the NHS Entity and/or price sensitive information;

**Company** means the entity engaged by the NHS Entity to provide Medical Services to the patients of the NHS Entity as required;

**Fee** means the gross fee which shall be payable by the NHS Entity to the Company in respect of the Medical Services performed by the Doctor(s) or Medical Professional(s);

**Doctor or Medical Professional** means the suitably qualified individual(s) deployed by the Company to provide the Medical Services to the NHS Entity, who is a director or employee of the Company;

**Medical Services** means the services to be provided by the Company to the NHS Entity as set out in the details of Assignment provided by the Brookson portal used by the NHS Entity which consist entirely of medical services provided by registered medical professionals with the primary purpose of protecting, maintaining or restoring the health of the NHS Entity’s patients, service users or customers (howsoever defined).
1.2. Unless the Terms require 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 these Terms are for convenience only and do not affect their interpretation.

1.4. Any reference in these Terms to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as, from time to time, amended, consolidated, modified, replaced, re-enacted or extended.

2. **THE AGREEMENT**

2.1. Subject to any variation under clause 2.2, this shall be the Agreement to the exclusion of all other terms and conditions (including any terms and conditions which the NHS Entity purports to apply under any other document).

2.2. No variation or alteration of the Agreement shall be valid unless agreed in writing and signed by an authorised representative of the Company and an authorised representative of the NHS Entity.

2.3. The Company has agreed to provide the Medical Services to the NHS Entity. For the avoidance of doubt, neither the provision of the Medical Services nor the terms of the Agreement are intended to create an employment relationship between the Company (or it’s Doctor or Medical Professional) and the NHS Entity.

2.4. Details of the Fee and duration of each Assignment shall be detailed in the details of Assignment provided by the Brookson portal used by the NHS Entity. A separate details of Assignment provided by the Brookson portal used by the NHS Entity shall be issued by the NHS Entity for every Assignment. Each Assignment shall constitute a separate Agreement.

2.5. Without prejudice to clause 3.1, the Agreement may be transferred, subcontracted or assigned to a third party by the NHS Entity or the Company provided that the prior written consent of the other party is obtained (such consent will not be unreasonably withheld or delayed).

2.6. The NHS Entity has no obligation to offer future contracts to the Company and if it does make any such offer, the Company is not obliged to accept it.

2.7. Nothing in the Agreement shall prohibit the Company from providing its services or those of its Doctor or Medical Professional to any other person or organisation.

3. **ASSIGNMENT**

3.1. The Company is obliged to undertake the Medical Services by providing such suitably qualified Doctor(s) or Medical Professional(s) as the Company considers appropriate, subject to the Doctor or Medical Professional being
previously approved by the NHS Entity before Medical Services are undertaken by the Company.

3.2. It is recognized that the Company (and the Doctors or Medical Professionals) are experts in the provision of medical healthcare services and the NHS Entity has engaged the Company in order that its patients can benefit from those medical healthcare services. In order that the Doctor or Medical Professional can most fully use their skill and expertise for the benefit of the NHS Entity’s patients, the Doctors or Medical Professionals (and the Company) shall retain reasonable autonomy in the method of performing the Medical Services, but in doing so, it shall co-operate with the NHS Entity and shall accept all reasonable and lawful instructions in relation to the scope of the Medical Services from the NHS Entity.

3.3. By undertaking this Assignment, the Company agrees to its details and the details of any Locum it supplies to the NHS Entity, being provided to Brookson Medical Care Services LLP, Ernst & Young LLP and NEP Shared System Group (NEP) to provide resourcing, management information, financial services and such other products and services which the NHS Entity may require from time to time.

4. TIMESHEETS

4.1. The NHS Entity shall provide timesheets to the Doctor or Medical Professional and the Company shall use reasonable endeavours to procure that the Doctor or Medical Professional complete the timesheets each day the Medical Services are provided to the NHS Entity, detailing the number of hours worked.

4.2. At the end of each week of the Assignment (or at the end of the Assignment where an Assignment is for a period of less than one week or is completed before the end of a week) the Company shall deliver to the NHS Entity the timesheets duly completed indicating the hours for which the Company provided the Medical Services in the preceding week and signed by an Authorised Representative.

4.3. Signature of the timesheet by the Authorised Representative will constitute acceptance that the Medical Services have been provided for the hours indicated.

4.4. In the event that the NHS Entity enters into a self-billing agreement with the Company, the timesheet must not be accompanied by an invoice from the Company for the amount due from the NHS Entity to the Company for the hours worked in that month. It is acknowledged that the amount due from the NHS Entity relates to the provision of Medical Services and therefore falls within the VAT exemption for Medical Services. However, in the event that VAT is payable in relation to the Medical Services, the amount due shall exclude any VAT due from, and payable by, the NHS Entity in relation to the Medical Services.

4.5. Where there is no self-billing agreement in place, the Company’s invoice should bear the Company’s name and company registration number. It is
acknowledged that the invoiced amount relates to the provision of Medical Services and therefore falls within the VAT exemption for Medical Services. However, in the event that VAT is payable in relation to the Medical Services, the invoiced amount shall exclude any VAT due from, and payable by, the NHS Entity in relation to the Medical Services.

5. FEES

5.1. The Company shall receive payment from the NHS Entity for an Assignment at the rate specified in the details of Assignment provided by the Brookson portal used by the NHS Entity. The payment will be in line with the role undertaken and the NHS pay scale applicable to that role as per The Medical and Dental National Terms and Conditions/Terms and Conditions - Consultants England (2003) Handbook, which will be confirmed when the Assignment is agreed by the NHS Entity.

5.2. The NHS Entity shall settle all invoices rendered by the Company relating to the provision of Medical Services by the Doctor or Medical Professional within seven (7) days of end of the calendar week in which the work was undertaken to which the invoice relates.

5.3. All payments shall be made to the Company.

6. LIABILITY

6.1. To the extent permitted by law, the Company shall be liable to the NHS Entity (up to the amount for which it is insured) for any claims for loss, damage, injury or expense by the NHS Entity arising directly from any negligent acts or omissions of the Doctors or Medical Professionals in providing the Medical Services, or from a breach of the terms of the Agreement.

6.2. To the extent permitted by law, the NHS Entity shall be liable to the Company for any claims for loss, damage, value added tax, injury or expense incurred by the Company arising directly from any negligent or willful acts or omissions of the NHS Entity in respect of the Medical Services, or from a breach of the terms of the Agreement, provided that the NHS Entity’s liability under this Agreement shall be limited to and shall not exceed the maximum amount to which it is insured in respect of professional indemnity matters and public liability matters.

6.3. Neither party shall be under any liability to the other party for any indirect economic loss, consequential loss or damage (whether loss of profit, loss of business, depletion of goodwill or otherwise) costs or expenses or other claims for consequential losses suffered by the other party howsoever caused by the other party including but not limited to the negligence of the other party or as a result of a breach of the Agreement.

6.4. The Company shall maintain adequate employer’s liability, public liability and professional indemnity insurance for the duration of the Agreement and shall make a copy of such policies available to the NHS Entity upon reasonable request.
6.5. Should the NHS Entity be required to deduct tax and National Insurance Contributions from amounts paid to the Company in accordance with Chapter 8 of Part 2 of ITEPA 2003 - workers' services provided through intermediaries, the parties agree that this does not render the NHS Entity liable for any employment or worker rights in respect of the Doctor or Healthcare Professional. Any claims for employment or worker rights (whether pursued in accordance with the Employment Rights Act 1996 or otherwise), shall only be brought against the Company.

6.6. In the event that the Company submits an invoice to the NHS Entity where the NHS Entity has entered into a self-billing agreement with the Company, the Company agrees to fully reimburse the NHS Entity for all payments made to the Company in relation to the invoice which it has submitted outside of the self-billing agreement within 5 business days of payment being received and agrees to indemnify the NHS Entity in relation to all costs, expenses and liabilities incurred by the NHS Entity in reclaiming such payments from the Company.

6.7. It is recognized that the Doctor or Medical Professional has personally and on behalf of the Company, agreed to these terms and conditions as a condition of accepting the engagement and providing the Medical Services to the NHS Entity. Accordingly, in the event that the Company is unable to reimburse the NHS Entity in accordance with clause 6.6 above, the Doctor or Medical Professional agrees to personally reimburse the costs, expenses and liabilities incurred by the NHS Entity.

7. OBLIGATIONS OF THE COMPANY

7.1. The Company shall:

7.1.1. take all reasonably practicable steps to ensure that its Doctor or Medical Professional and any other person affected by the Doctor’s or Medical Professional’s actions on the Assignment are not unduly exposed to risks to their health or safety over and above those risks ordinarily identified in a hospital similar to that operated by the NHS Entity;

7.1.2. ensure, so far as is reasonably practicable, that the Doctor or Medical Professional complies with any applicable health and safety policies and procedures which apply to limited companies in force at the premises where the Medical Services are being performed during the Assignment;

7.1.3. provide the NHS Entity with any progress reports which may be reasonably requested;

7.1.4. comply with all the requirements of VAT legislation and the Companies Act 1985;

7.1.5. comply with the Reporting of Diseases and Dangerous Occurrences Regulations 1995; and
7.1.6. undertake reasonable endeavours to ensure that it’s Doctor(s) or Medical Professional(s) act with integrity and conduct themselves in an appropriate and professional manner, including but not limited to ensuring that it’s Doctor or Medical Professionals do not attend work under the influence of, or smelling of, alcohol or illegal drugs and/or being, or appearing to be, in possession of firearms or other offensive weapons.

7.2. The Company shall be responsible for paying statutory sick pay, holiday pay, statutory maternity pay, paternity pay or adoption pay to its Doctor or Medical Professional providing the Medical Services under the Agreement.

7.3. The NHS Entity shall not be responsible for providing any training to the Company or its Doctor(s) or Medical Professional(s). It is acknowledged that the Company is solely responsible for maintaining the Continuing Professional Development of its Doctor(s) or Medical Professional(s).

7.4. The Company shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act of 2010. Without prejudice to the generality of this clause, the Company shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

7.5. The Company acknowledges that professional registration is an essential condition of the Company’s engagement or continued engagement in the National Health Service and specifically the NHS Entity. It is therefore necessary for the Company (or its Doctor(s) or Medical Professional(s)) to produce evidence of that registration on demand and to renew that registration as required at the Company’s own cost.

7.6. In order to work within the Clinical Governance framework, and all UK and EU legislation, the NHS Entity has procedures in place to ensure that it recognises the levels of competence of medical staff and that its medical staff are educated and trained to develop their abilities. The NHS Entity expects the Company and its Doctor(s) or Medical Professional(s) to comply with these procedures at all times and work within the Doctor’s or Medical Professional’s competence. These procedures encompass the competent use of diagnostic and therapeutic equipment. At all times, the Doctor’s or Medical Professional’s actions must be in the best interests and well-being of patients and in consideration of other members of the NHS Entity’s staff. If a situation arises where the Company has concerns about its Doctor’s or Medical Professional’s own competence or ability to perform the Medical Services to an acceptable level, the Company must inform the NHS Entity immediately.

8. OBLIGATIONS OF THE NHS ENTITY

8.1. The NHS Entity shall:

8.1.1. notify the Company within seven (7) days in the event that the Doctor or Medical Professional is required to work outside the UK and provide
details of any additional requirements including but not limited to
medicals, visas and insurance;

8.1.2. make available, free of charge, such working space and facilities at
the premises as the Doctor or Medical Professional may reasonably
require in order to perform the Medical Services; and

8.1.3. provide to the Company access to the premises and such of its
information, records and other materials as may be reasonably
necessary for the Doctor or Medical Professional to perform the
Medical Services.

8.2. The NHS Entity shall ensure that any information provided by any Doctor
providing the Medical Services in relation to an accident or incident at work is
passed on to the Company so that the Company can comply with its
obligations under the Reporting of Injuries, Diseases and Dangerous
Occurrences Regulations 1995.

9. TAX AND NATIONAL INSURANCE CONTRIBUTIONS

9.1. Subject to clause 9.6 below, the Company shall be responsible for any PAYE,
Income Tax and National Insurance contributions and any other taxes and
deductions payable in respect of its Doctor(s) or Medical Professional(s)
under the terms of this Agreement.

9.2. Where any Doctor or Medical Professional provided by the Company to the
NHS Entity is liable to be taxed in the United Kingdom and/or liable to pay
National Insurance Contributions (NICs) in respect of income the Doctor or
Medical Professional receives from the Company which may be derived from
the Fees paid by the NHS Entity under this Agreement, the Company shall
ensure that both the Company and the Doctor or Medical Professional:

9.2.1. complies with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all
other statutes and regulations relating to income tax;

9.2.2. complies with the Social Security Contributions and benefits Act 1992 (SSCBA)
and all other statutes and regulations relating to NICs;

9.3. The NHS Entity may, at any time during the term of this Agreement, request
the Company or the Doctor or Medical Professional to provide information
which demonstrates how the Company and the Doctor or Medical
Professional complies with clause 9.2 above or why clause 9.2 does not apply
to it.

9.4. A request under clause 9.3 above may specify the information which the
Company and/or the Doctor or Medical Professional must provide to the NHS
Entity and the period in which that information must be provided.

9.5. The NHS Entity may supply any information which it receives in accordance
with this clause 9 to the Commissioners of Her Majesty’s Revenue and
Customs for the purposes of the collection and management of revenue for
which they are responsible.
9.6. In the event that Chapter 10 of Part 2 of ITEPA 2003 - workers’ services provided through intermediaries, applies to this engagement:

9.6.1. the NHS Entity shall be required to deduct tax and National Insurance Contributions at source from the amounts paid to the Company in accordance with these terms and conditions;

9.6.2. the invoiced amount and/or the rate advertised to the Company and/or the Locum for the Medical Services shall be reduced by the prevailing rate of Employer’s National Insurance Contributions (currently 13.8%) and the Apprenticeship Levy at the prevailing rate; and

9.6.3. the parties acknowledge and agree that the invoiced amount and/or the rate advertised being reduced in accordance with clause 5.4.2 above, shall mean that Employers’ National Insurance Contributions are not paid by any Doctor or Medical Professional involved in the provision of the Medical Services.

10. CONFIDENTIAL INFORMATION

10.1. The Company shall use reasonable endeavours to ensure that its Doctor or Medical Professional will not during the continuance of the Agreement or afterwards (unless authorised to do so by the NHS Entity) use for their own benefit or any other person, or disclose to any other person or through any failure to exercise all due care and diligence cause or permit any unauthorised disclosure of any Confidential Information which it has obtained by virtue of the Assignment or in respect of which the NHS Entity is bound by an obligation of confidence to a third party.

10.2. For the avoidance of doubt, clause 9.1 shall not apply in respect of any Confidential Information which is in or becomes part of the public domain, other than through a breach of the obligations of confidentiality set out in this Agreement, or to the extent that the Company or its Doctor or Medical Professional are required to disclose Confidential Information by any applicable law, governmental order, decree, regulation, licence and/or rule.

10.3. The Company shall use reasonable endeavours to ensure that the Doctor or Medical Professional will (at the expense of the NHS Entity) deliver up to the NHS Entity (as directed) at the end of the Assignment all documents (and copies) and materials belonging to the NHS Entity which are in its possession or control.

11. TERMINATION

11.1. Either the NHS Entity or the Company may instruct the other party to terminate the Agreement at any time upon giving the other party one (1) hours notice in writing.

11.2. Either party may without notice instruct the other party to terminate the Agreement:
11.2.1. if the other party is in material breach of its obligations under this Agreement which cannot be remedied or commits a breach of a material obligation which can be remedied and fails to remedy it within thirty (30) minutes of receiving notice requiring it to be remedied; or

11.2.2. if the other party passes a resolution for its winding up or a court of competent jurisdiction makes an order for the party’s winding up or dissolution, or an administrator or receiver is appointed in relation to the other party or if the other party makes an arrangement or composition with its creditors generally.

11.3. If the Doctor or Medical Professional is unable to perform the Medical Services for any reason, and a suitable substitute can not be found then the Company should inform the NHS Entity as soon as is reasonably practicable. In the event that the Company cannot find a substitute for the Doctor or Medical Professional and notice of the same has been given to the NHS Entity, the NHS Entity shall be able to terminate the Agreement with immediate effect provided that the Company receives all Fees due up to and including the date of termination of the Agreement.

11.4. The NHS Entity may terminate this Agreement if in the event of a request being made in accordance with clause 9.3 above:

11.4.1. The Company and/or the Doctor or Medical Professional fails to provide information in response to the request within the time period specified in the request or, where no period is specified within the request, within a reasonable period of time;

11.4.2. The Company and/or the Doctor or Medical Professional provides information which is inadequate to demonstrate either how the Company and/or Doctor or Medical Professional complies with clause 9 above, or why clause 9 above does not apply to the Company and/or Doctor or Medical Professional;

11.4.3. In the event of a request being made in accordance with clause 9.4 above, the Company and/or Doctor or Medical Professional fails to provide the information specified in the request within the specified period; or

11.4.4. It receives information which demonstrates that Clause 9 applies to the Company and/or Doctor or Medical Professional and the Company and/or Doctor or Medical Professional are not complying with the obligations contained within clause 9.

12. NOTICES

12.1. Any notice or communication under the Agreement shall be in writing and shall be delivered personally or sent by first (1st) class pre-paid post or by facsimile transmission to the party due to receive the notice or communication to its registered office or to such other address or facsimile number as a party may have notified to the other party.
12.2. Any such notice will be deemed to have been effected:

12.2.1. if delivered personally, at the time when left at the registered office or such other address as shall be notified;

12.2.2. if delivered by post, two (2) Business Days after posting;

12.2.3. if sent by facsimile transmission at the time of transmission or, if the time of transmission is outside normal working hours, upon the next Business Day.

12.3. E-mail notice shall not be valid for the purposes of the Agreement.

13. **FORCE MAJEURE**

13.1. For the purpose of the Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Affected Party including without limitation, fire, storm, tempest, war, hostilities, rebellion, insurrection, military or usurped power, civil war, labour lock-outs, strikes and other industrial disputes, riots, commotion, disorder, decree of Government, non-availability of labour or any other circumstances which adversely affects the performance of the obligations of the Agreement.

13.2. If either party is prevented, hindered or delayed from or in performing any of its obligations under the Agreement (other than a payment obligation) by a Force Majeure Event it shall promptly notify the other party of the nature and extent of the circumstances in question and the effects of the Force Majeure Event on its ability to perform its obligations under the Agreement.

13.3. Notwithstanding any other provision of the Agreement, neither party shall be deemed to be in breach of the Agreement or otherwise be liable to the other parties for any delay in performance or the non-performance of any of its obligations under this Agreement (other than a payment obligation) to the extent that the delay or non-performance is caused by the Force Majeure Event of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

13.4. If the Force Majeure Event continues for more than one month, the parties shall enter into discussions in good faith with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

14. **GENERAL**

14.1. If any provision of the Agreement is held by a court or other competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected.

14.2. Any waiver by either party of any breach or any default under any provision of the Agreement does not constitute a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
14.3. Nothing in this Agreement is intended to make the Company, Doctor or Medical Professional an employee, worker, officer, partner or agent of the NHS Entity.

15. **THIRD PARTY RIGHTS**

15.1. Nothing in the Agreement is intended to confer on any person any right to enforce any term of the Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

16. **LAW AND JURISDICTION**

16.1. The Agreement shall be governed by and construed in accordance with the laws of England and Wales and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the Agreement shall be subject to the exclusive jurisdiction of the Courts of England and Wales.