



dated **2024**

Newcross Healthcare Solutions Limited

and

[Party]

HealthForce Connect Platform Agreement

SUBJECT TO CONTRACT

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Agreement

dated 2024

Parties

- (1) **Newcross Healthcare Solutions Limited** (company number 03184321) a company incorporated in England and Wales whose registered office is at Waterside, Berry Pomeroy, Totnes, Devon, TQ9 6LH (**Newcross**); and
- (2) **[INSERT]** (company number [INSERT]) a company incorporated in England and Wales whose registered office is at [INSERT] (which, along with its successors and permitted assignees, is called the **Client**).

Introduction

- (A) Newcross is in the business of providing the HealthForce App which is a technological solution for sourcing temporary agency staff to optimise the relationships between the Client and Agencies.
- (B) The Client hereby engages Newcross to act as an intermediary between the Client and its Agencies and to facilitate, via the HealthForce App, payments made in respect of services provided by Agency Temporary Resource and subject to the terms and conditions set out in this Agreement administer payments to each Agency on behalf of the Client.
- (C) The terms and conditions of this Agreement shall apply to all services Newcross provides to the Client.

Agreed terms

1 Definitions and interpretation

- 1.1 In this Agreement the following words have the following meanings unless inconsistent with the context:

Agency means any third-party employment business/agency which introduces and/or supplies Temporary Resource to the Client and in relation to which the Client has entered into an Agency Agreement requiring the Agency to register Temporary Resource and **Agencies** shall mean all such agencies;

Agency Agreement means the agreement between the Client, Newcross and each Agency setting out the terms and service levels upon which the Agency will source, introduce and supply the services of Temporary Resources to the Client;

Agreement means this Agreement and its Schedules together with the Rate Link;

Business Day means any day (other than Saturday or Sunday) on which clearing banks are open for business in London;

Charges means the total amount payable by the Client in respect of the services provided by the Agencies and Newcross;

Charge Rates means the charge rates (including any cancellation fees that may apply from time to time) for each Scope and Requirement type, Location and Shift type as set out in the Rates Link.

Commencement Date means [XX/XX/20XX];

Data Protection Laws means the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 and any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data;

Newcross' Group means Newcross, any body corporate of which Newcross is a subsidiary (as defined in section 1159 Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of Newcross;

Downtime Period means the period between 4.45 pm and 6 pm on the first Business Day following a weekend;

Force Majeure means any cause preventing a party from performing any or all of its obligations arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party so affected including, without limitation, strikes, lockouts or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm;

HealthForce App means the on-line electronic timesheet and invoice processing system used by Newcross in the provision of the Services which allows the Client and/or Newcross to create assignments, authorise bookings, facilitates the creation of candidate profiles (including relevant compliance documentation) and reporting;

HealthForce App Commencement Date means the date on which the Client first inputs time recording data into HealthForce App in respect of services performed by a Temporary Resource;

Initial Term has the meaning given to it in clause 10.1;

Intellectual Property Rights means any and all rights in and to inventions, copyrights, trade marks, service marks, design rights (whether registered or unregistered), registered designs, patents, semiconductor topography rights, rights to extract or re-utilise data, database rights, trade secrets, rights of confidence and all other similar rights and applications for and rights to apply for any of the above, in each case subsisting from time to time in any part of the world;

Invoice Authorisation Date means the first Business Day of the week following the week to which the time records relate to. Example: If the time records relate to week commencing Monday 4 June 20xx, if there are no public holidays in between, the Invoice Authorisation Date falls on the following Monday, 11 June 20xx;

Location means any location(s) which is listed in Schedule 1 as amended by agreement between the parties from time to time and **Locations** shall mean all such locations;

Losses means all losses, liabilities, damages, costs, expenses reasonable legal fees and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

Newcross Temporary Resource means any person introduced and assigned by Newcross to perform services for the Client on a temporary basis in response to a Requirement;

Newcross Temporary Resource Terms means the terms in which Newcross supply Temporary Resource as set out in Schedule 1;

Rates Link means any notification of the Client's rates as set by Newcross from time to time;

Request for Payment means the schedule of Agencies' Costs, split by Agency;

Requirement means any verbal or written requirement for Temporary Resource Services within the Scope issued by the Client;

Scope means the scope as set out in Schedule 1 and as varied from time to time

Services means the management of the Temporary Agency staff outsourcing solution services as set out in Schedule 1;

Shift means the number of consecutive hours in any 24 (twenty-four) hour period in which a Temporary Resource provides services for the Client;

Temporary Resource means any person (including any limited company contractor) introduced and assigned by an Agency to perform services for the Client on a temporary basis in response to a Requirement;

Temporary Resource Services means the services to be performed by the Temporary Resource as agreed between an Agency and the Client;

Term means the term of this Agreement as determined pursuant to clause 10;

Terms of Use means the terms of use set out in Schedule 4;

Timesheet means the timesheet provided within the HealthForce App;

Timesheet Authorisation Report means such timesheet authorisation reports as provided by Newcross from time to time;

VAT means value added tax at the prevailing rate from time to time; and

Writing means and **written** shall, except as expressly set out in this Agreement, include email.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Words in the singular shall include the plural and vice versa.

1.7 A reference to one gender shall include a reference to the other gender.

1.8 A reference to any party shall include that party's personal representatives, successors or permitted assigns.

1.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule.

2 **The Services**

2.1 Newcross will provide the Services with reasonable skill and care.

2.2 Newcross will use the HealthForce App to capture all time recording data in respect of the Temporary Resource and use this data to generate a consolidated Request for Payment for submission on behalf of the Agencies to the Client.

- 2.3 The Client shall place all of its Requirements via the HealthForce App. The Client shall only place Requirements, which are within the scope of this Agreement, with agencies other than those Agencies supplying pursuant to this Agreement, after it has first put the Requirement to the Agencies and they have been unable to fill it. If the Client is, at any time, unable to resource a Requirement via an Agency the Client shall immediately notify Newcross and provide a report detailing the steps it has taken to resource the Requirement via the Agencies and pass on the details of the agency used.
- 2.4 Save for as set out in 2.3, during the term of this Agreement the Client shall not use any other provider of the Services in respect of the recruitment and/or use of temporary resource.
- 2.5 Newcross will use reasonable endeavours to:
- 2.5.1 make HealthForce App available to the Client and each Agency;
 - 2.5.2 in co-operation with each Agency, set up the necessary arrangements to enable the Client (or, where the Client has so elected, the Agency) to record the number of hours worked at each Location by each Temporary Resource;
 - 2.5.3 use the information captured via HealthForce App to generate a consolidated Request for Payment to the Client in respect of services supplied by all Agencies;
 - 2.5.4 make available to each Agency information provided by the Client for each Agency to indicate whether the supply of a Temporary Resource is either exempt or standard rated for VAT purposes; and
 - 2.5.5 request that the relevant Agency enters into the agreement materially in the same terms as set out in Schedule 3.
- 2.6 The Client shall execute and return a signed agreement obtained by Newcross in accordance with 2.5.5 within 5 working days of receipt.
- 2.7 The Client agrees that the standards set out for the provision of services from an Agency to the Client in the Agency Agreement meets its requirements.
- 2.8 The Client will (provided that HealthForce App is available for the Client to do so) nominate, and notify to Newcross, at least one person and one deputy person to be time recorded approvers and authorisers for each Location.
- 2.9 The Client will input in HealthForce App the hours recorded for each Temporary Resource and all occasional, previously agreed, expenses incurred by the Temporary Resource, including, without limitation, road tolls and necessary overnight stays, and any productivity or attendance payments which may become payable to Temporary Resource by the agreed authorisation/approved times on the Invoice Authorisation Date. If the Client fails to input any such time records by 4.45 pm on the relevant Invoice Authorisation Date then the Invoice processing will be pushed to the next week, until the hours have been input by the Client. Any Timesheet hours that have not been entered to HealthForce App by the Client during the first Authorisation Date 4.45 pm will be recorded as a non-conformance on the Timesheet Authorisation Report. An absolute timesheet input cut off is 14 days from the first Authorisation Date and the Client shall forfeit all timesheets not submitted within such time.
- 2.10 Newcross will use its reasonable endeavours to ensure that HealthForce App is available to the Client 24 (twenty-four) hours a day, seven (7) days a week except during the Downtime Period. Newcross will, whenever reasonably practicable, give the Client at least three (3) days' notice of any maintenance downtime or disruptions and will advise on the procedure to be adopted during that downtime.
- 2.11 Newcross will provide the Client with initial training on the access and use of HealthForce App which, subject to the remainder of this clause 2, shall be at no charge to the Client.

- 2.12 The data entered into HealthForce App will be stored by Newcross on secure servers and continually amended and updated by the Client (or, as the case may be, the Agency). Newcross reserves the right to amend programs, information and facilities from time to time.
- 2.13 The Client shall keep secure and confidential any user identification, password and any other confidential information provided by Newcross to the Client for the secure use of the HealthForce App system.
- 2.14 The Client shall immediately remove access rights in respect of any person who is an authorised user of the HealthForce App if that person's employment or engagement terminates with the Client.
- 2.15 The Client shall comply with the terms of the HealthForce App Terms of Use.
- 2.16 Newcross may from time to time supply Temporary Resource in accordance with the terms as set out in Schedule 2.
- 3 Charges and payment terms**
- 3.1 Newcross will, prior to providing the Services in respect of a Location, agree with the Client the applicable third party agency Charge Rates.
- 3.2 Newcross may increase the Charge Rates to take account of changes in law including increases in the national minimum wage, changes to agency workers or pensions law and/or change in entitlement to paid working holiday and otherwise may increase the Charge Rates at any time by giving the Agency no less than 28 days' notice.
- 3.3 Newcross shall make a charge to the Client for the use of the HealthForce App in the amount and on the terms set out in Schedule 6.
- 3.4 The Client acknowledges and agrees that Newcross may make a charge to the Agencies for the use of HealthForce App.
- 3.5 The Client acknowledges and agrees cancellation fees may apply from time to time as set out in the Rate Link.
- 3.6 Newcross in the capacity of agent for the Agency will issue: (a) a Request for Payment; and (b) a VAT invoice on behalf of the Agency to the Client for the balance of the Charges due, weekly, based on the Charge Rates, for all hours recorded and authorised via the HealthForce App. For the avoidance of doubt, in the calculation of the sums due to Newcross in relation to the Temporary Resource Services performed by the Temporary Resource, the data inputted by the Client (or, where the Client's HR or Procurement Department so requests, an Agency) and authorised via the HealthForce App shall be conclusive evidence that the Temporary Resource Services have been performed to the Client's satisfaction at the times and for the total period of time recorded via HealthForce App.
- 3.7 The Client shall, within 28 days of the date of each Request for Payment and invoice, pay to Newcross, acting as agent for the Agencies, the sums due.
- 3.8 Failure by the Client to authorise and/or approve time entries shall not absolve the Client from its obligation to pay Newcross the Request for Payment and associated invoices.
- 3.9 The Client shall make all payments due under this Agreement to Newcross by BACS payments to Newcross' bank account, details of which shall be notified to the Client by Newcross.
- 3.10 On behalf of the Agency Newcross shall be entitled to charge the Client interest on any overdue amounts at the rate of 4% (four percent) per annum above the base rate of Barclays Bank plc from time to time in force from the due date until the date of payment, and any such interest shall be payable on demand. Any such interest will be passed on by Newcross to the relevant Agency.
- 3.11 All amounts payable under this Agreement are subject to VAT and any other like taxes applicable, at the applicable rate as identified by the Agency.

- 3.12 Newcross will, pay the relevant Agencies within seven (7) days of receiving the corresponding payment from the Client. This clause 3.12 is made for the benefit of Agencies to which payments are due in respect of Temporary Resource supplied to the Client and, accordingly, each of those Agencies may in its own right enforce the provisions of this clause 3.12 in accordance with the Contracts (Rights of Third Parties) Act 1999 provided that each third party's rights under this Agreement are personal to that third party and may not be assigned or otherwise transferred, in whole or in part.
- 3.13 Without prejudice to clause 3.12, Newcross shall not be liable to the Agencies for payment until Newcross receives payment of the Agencies' Costs from the Client in respect of the Agencies raised VAT invoice. Until the Agencies' Costs are received by Newcross from the Client in full in cleared funds the Client shall remain liable to the Agency for payment of the element of the Request for Payment which relates to the supply of Temporary Resource by the Agency to the Client and shall not refer the Agency to Newcross for resolution of any payment query. In the event that Newcross has a receiver or administrator appointed over the whole or substantially the whole of its undertaking the Client shall be liable only to pay to Newcross the amount invoiced by Newcross for its fees. The Client will, in these circumstances, arrange for the Agencies' Costs to be paid directly to the relevant Agencies.
- 3.14 Upon receipt of the Agencies' Costs Newcross acknowledges and agrees that the Client shall no longer be liable to an Agency for payment of the Agencies' Costs and Newcross hereby indemnifies the Client for any Losses it suffers and incurs as a result of an Agency claiming payment from the Client in respect of any Agencies' Costs which have been received by Newcross.
- 3.15 In the occurrence of temporary resource expenditure which is not sourced via an Agency pursuant to this Agreement, Newcross and the Client shall work together to contract the out of contract Agency and the Client shall promptly enter details of such assignments/bookings into the HealthForce App allowing payment through this Agreement.
- 3.16 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.

4 Acknowledgments and liability

- 4.1 Nothing contained in this Agreement shall in any way constitute any Temporary Resource as the employee or worker of Newcross or the Client. Nothing contained in this Agreement shall in any way constitute any Newcross Temporary Resource as the employee or worker of the Client or any Agency.
- 4.2 This Agreement governs the relationship between Newcross and the Client for the provision of the Services. The Client acknowledges and agrees that it has a separate contract with each of the Agencies providing Temporary Resource governing the introduction and supply of Temporary Resource to meet Requirements issued by the Client. Accordingly, Newcross does not accept any responsibility or liability for the acts or omissions of any of the Agencies or the Temporary Resource they supply including but not limited to any Agency omission or error for VAT in respect of the Agency supply of Temporary Workers to the Client.
- 4.3 The Client acknowledges that Newcross is in the business of providing temporary resource outsourcing solutions. Accordingly, Newcross liability is limited as set out in this clause 4.
- 4.4 Except as expressly stated in clause 4.5:
- 4.4.1 Newcross liability for loss of or damage to the Client's tangible property arising directly from its negligence shall not exceed the lower of the transactional fees paid in the previous 12 months in respect of the Services or £125,000;
- 4.4.2 Newcross shall have no liability for any indirect or direct Losses which may be suffered by the Client (or any person claiming under or through the Client), and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) loss of profits;

- (b) loss of anticipated savings;
- (c) loss of business opportunity;
- (d) loss of goodwill;
- (e) special damage including where Newcross was aware of the circumstances in which such special damage could arise;

provided that this clause 4.4.2 shall not prevent claims for loss of or damage to the Client's tangible property that fall within the terms of clause 4.4.1;

4.4.3 Newcross shall not be liable for any indirect loss whether arising in contract, tort (including negligence) or otherwise under or pursuant to this Agreement;

4.4.4 the total aggregate liability of Newcross, whether arising in contract, tort (including negligence) or otherwise under or pursuant to this Agreement, shall in no circumstances exceed a sum equal to £125,000;

4.5 The exclusions and limitations set out in this Agreement shall apply to the fullest extent permissible at law, but Newcross does not exclude liability for death or personal injury caused by the negligence of Newcross; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 Sale of Goods Act 1979 or Part 2 Supply of Goods and Services Act 1982; or for any other liability which may not be excluded by law.

4.6 Client will indemnify and keep indemnified on demand and hold harmless Newcross from and against all Losses suffered or incurred by it arising out of or in connection with:

4.6.1 any act or omission by Client that is in breach of this Agreement;

4.6.2 any third party claim relating to the provision, supply or use of any Services to the extent that any such claim relates to any act, neglect or default of Client.

4.7 Nothing in this Agreement limits or excludes a party's liability under the indemnities given by it in clauses 4.6.1 and 4.6.2.

5 **Confidentiality**

All information given by either party (the **Disclosing Party**) to the other (the **Recipient**) or otherwise obtained by the Recipient relating to the Disclosing Party's business (including, without limitation, information relating to the Rates Link) or operations or of any person, firm, company or organisation associated with the Disclosing Party (except for information which is in or enters the public domain other than by breach of this clause 5) shall be treated by the Recipient as confidential and not used other than for the benefit of the Disclosing Party, nor disclosed to third parties without the Disclosing Party's prior written consent except to the extent required by law or for the purposes of performing its obligations or enforcing its rights under this Agreement.

6 **Intellectual property**

6.1 Newcross acknowledges and agrees that all time record data relating to services carried out by Temporary Resource shall as between Newcross and the Client belong to the Client.

6.2 The Client acknowledges that it will not at any time have any Intellectual Property Rights in HealthForce App, any reports generated via the HealthForce App or any other software or systems implemented or utilised by Newcross.

7 **Insurance**

7.1 Newcross shall throughout the term of this Agreement ensure that the following insurances are in place:

- 7.1.1 professional indemnity - £5,000,000;
- 7.1.2 public and/or product liability - £5,000,000; and
- 7.1.3 employer's liability - £10,000,000.

8 **Data Protection**

- 8.1 The provisions contained within Schedule 5, the Data Processing Agreement shall apply to this Agreement.

9 **Review of agreement**

- 9.1 Without prejudice to the above and any other terms of this Agreement, the parties agree to hold a formal review of the terms of this Agreement and the charges contained in it not less than 28 (twenty-eight) days before the first anniversary of the Commencement Date and at regular annual intervals thereafter.

10 **Termination**

- 10.1 This Agreement shall come into effect on the Commencement Date hereof and, subject to clause 10.2, shall continue in force for an Initial Term of 24 (twenty-four) months from the Commencement Date (the **Initial Term**). This Agreement may be renewed for another 12 (twelve) month period, following the Initial Term and can be terminated by either party giving not less than four (4) calendar months' prior written notice, such notice to expire on or after the expiry of the Initial Term or renewal period. Newcross may terminate this agreement with 8 weeks' notice.

- 10.2 Either party may terminate this Agreement forthwith as follows:

- 10.2.1 by notice to the other party if there is any material breach of this Agreement by the other party, which is, in the reasonable opinion of the terminating party, incapable of being remedied; or
- 10.2.2 by notice to the other party if there is any other material breach of this Agreement by the other party, which is, in the reasonable opinion of the terminating party, capable of remedy and which is not remedied within 20 (twenty) Business Days of such notice; or
- 10.2.3 by giving ten (10) Business Days' notice to the other party if an event of Force Majeure affecting the other party prevails for a continuous period of more than 60 (sixty) Business Days; or
- 10.2.4 by notice to the other party if the other party convenes a meeting of its creditors; or
- 10.2.5 by notice to the other party if a proposal is made by the other party for a voluntary arrangement within part I of the Insolvency Act 1986 or any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors; or
- 10.2.6 by notice to the other party if the other party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 10.2.7 by notice to the other Client trustee, receiver or administrative receiver or similar officer is appointed in respect of all or any part of the other party's business or assets; or
- 10.2.8 by notice to the other party if a petition is presented or a meeting is convened for the purpose of considering a resolution (or other steps are taken) for the winding-up of the other party otherwise than for the purpose of an amalgamation or reconstruction; or
- 10.2.9 by notice to the other party if a petition is presented for an administration order in respect of the other party.

- 10.3 Termination of this Agreement shall be without prejudice to any accrued rights of either party.
- 10.4 Clauses 2.15, 3, 4, 5, 6, 8, 10.3, 10.4, 12 and 13 shall survive termination of this Agreement.
- 10.5 It is agreed that the Client has access to retrieve any reports or other information, including booking authoriser's setup structure and user data, up to four (4) months after the termination of this Agreement and Newcross shall cooperate and assist with retrieving such information.
- 11 **Force majeure**
- A party shall not be in breach of this Agreement, nor be liable for any failure or delay in performance of any obligations under this Agreement arising from Force Majeure and the time for performance of such obligations shall be extended by a period equal to the period during which the event of Force Majeure subsists. A Client effected by an event of Force Majeure shall notify the other Clients soon as possible of the Force Majeure and shall use reasonable endeavours to mitigate its effect.
- 12 **Non solicitation**
- During the Term and for a period of six (6) calendar months following expiry of termination of this Agreement, neither party shall offer to employ or engage or otherwise endeavour to entice away from the other anyone engaged or employed at the termination of this Agreement by the other or any member of the group of companies of which the other is a member.
- 13 **Anti-bribery, corruption and modern slavery**
- 13.1 The parties shall comply with all applicable law relating to anti-bribery and corruption, including but not limited to the Bribery Act 2010, and during the Term have and shall maintain in place suitable policies and procedures to ensure such compliance and will enforce them where appropriate.
- 13.2 Neither Newcross nor the Client shall engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 13.3 Both parties undertake that they shall promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.
- 13.4 The parties shall comply with all applicable law and regulations relating to modern slavery, including but not limited to the Modern Slavery Act 2015, and during the Term have and maintain its own policies and procedures to ensure compliance with the Modern Slavery Act.
- 13.5 Both parties shall ensure that none of its officers, employees or other persons associated to it:
- 13.5.1 has been convicted of any offence involving slavery and/or human trafficking;
- 13.5.2 has been convicted of any offence involving corruption and/or bribery; and
- 13.5.3 having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of, or in connection with, modern slavery, human trafficking, corruption and/or bribery.
- 13.6 The parties shall notify the other party in writing if it is aware of or has reason to believe that it or any of its officers, employees, agents or any other person associated to it have breached or potentially breached any of the obligations under this clause 13.
- 13.7 Breach of this clause 13 shall be deemed a material breach of this Agreement which is incapable of remedy and either party shall be entitled to terminate this Agreement immediately in accordance with clause 10.

14 **General**

- 14.1 This Agreement and Agency Agreements as entered into from time to time constitutes the entire agreement between the parties and supersedes all previous agreements, trade custom, practice or course of dealing and arrangements (if any) whether written, oral or implied between Newcross and the Client relating to the Services and all such agreements still effective at the date of this Agreement (if any) shall be deemed to have been terminated by mutual consent with effect from the Commencement Date but without prejudice to any rights which have arisen prior to such termination. The Client acknowledges that, in entering this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty or representation. The only remedy available to it for breach of such warranties or representations shall be for breach of contract under the terms of this Agreement. Nothing in this clause 14.1 shall operate to exclude or limit the liability of any party in respect of fraud.
- 14.2 This Agreement is personal to the Client and it shall not be entitled to assign or sub-contract its obligations or rights under this Agreement to any third party without the prior written consent of Newcross. This Agreement is personal to Newcross and it shall not be entitled to assign or sub-contract its obligations or rights under this Agreement to any third party without the prior written consent of the Client.
- 14.3 No amendment to this Agreement is effective unless it is in writing and signed by a Director on behalf of each Newcross and a person duly authorised by the Client.
- 14.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or provided by law shall be taken as that party's waiver of such right or remedy, nor shall it prevent or restrict the exercise of that right or remedy. Neither party's exercise or partial exercise of any right or remedy shall prevent or restrict any further exercise of that or any other right or remedy.
- 14.5 The restrictions contained in this Agreement are considered reasonable by the parties, but, if any such restriction is found void but would be valid if some part of the restriction were deleted, such restriction shall apply with such deletion as may be necessary to make it valid and effective.
- 14.6 If any provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:
- 14.6.1 such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected;
- 14.6.2 to the extent permitted by law, the Agency and the Client shall negotiate in good faith a replacement to any provision severed under clause 14.6.1 by a provision which is of similar effect but which is not illegal or unenforceable.
- 14.7 Any notice required to be given under this Agreement shall be:
- 14.7.1 in writing signed by a person duly authorised by the sending party;
- 14.7.2 delivered by hand, email, or prepaid Royal Mail Special Delivery service to the recipients postal or email address as notified from time to time to the sender by the recipient for the purposes of this Agreement; and
- 14.7.3 deemed to have been given and served:
- (a) if delivered by hand, at the time of delivery;
- (b) if sent by prepaid Royal Mail Special Delivery Service, upon signature of the recipient on the selected delivery slot (9 am or 1 pm).
- 14.8 This Agreement shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

- 14.9 With the exception of the benefit conferred to an Agency under clause 3.12, none of the provisions of this Agreement is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees of Newcross and the Client who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 15 **Dispute resolution**
- 15.1 Subject to clause 15.3, any question or difference which may arise concerning the Services or this Agreement will be dealt with as follows:
- 15.1.1 in the first instance, the issue may be dealt with by the Newcross Manager and the relevant Location Client manager;
- 15.1.2 if the issue cannot be resolved in accordance with clause 15.1.1, the matter should be escalated to the Client Group Director of People level and Newcross Director level;
- 15.1.3 if the issue cannot be resolved in accordance with clauses 15.1.1 and 15.1.2, the parties agree to enter into mediation in good faith to settle such dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 (fourteen) business days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 15.2 Subject to clause 15.3, no party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, **provided that** the right to issue proceedings is not prejudiced by a delay.
- 15.3 This clause 15 shall not apply in the case of a dispute arising from the Client's failure to pay any fees due under this Agreement.

This Agreement has been entered into by the parties on the date stated at the beginning of it.

Schedule 1 Managed Services

Commencement Date: the earlier of the date of this Agreement and the first HealthForce App Commencement Date.

Location(s): all of the Client's UK locations.

Scope: The management of all of the Client's requirements for the supply of Temporary Resource.

Newcross shall use its reasonable endeavours to:

- 1 provide the Client with an online platform, HealthForce App as a real time Temporary Resource marketplace. This portal is to allow full transactional and cost visibility including transactional details, audit trails, invoicing and authorisation workflow;
- 2 ensure that HealthForce App the online platform provides the capability for:
 - 2.1 booking authorisation process – after the vacancy has been entered into HealthForce App, HealthForce App will forward the request for the relevant authoriser for authorisation.
 - 2.2 all Assignments to be entered and any relevant authorisations in the HealthForce App by the Clients personnel (as specified by the Client). This requirement can be changed only by the Clients HR or Procurement Departments;
 - 2.3 all Assignment extensions are to be sent through the authorisation process prior to sending to any Agency;
 - 2.4 process the Request for Payment;
 - 2.5 candidate pool creation;
- 3 Newcross shall distribute, on behalf of the Client, and arrange for each proposed third party agency to sign the Agency Agreement in materially the same terms as set out in Schedule 3; and
- 4 Newcross shall use its reasonable endeavours to support the Client to use HealthForce App.

Schedule 2 Newcross standard Terms for the supply of healthcare workers

Agreement for the supply of Establishment Care Services

1 Commencement and Term

- 1.1 This Schedule 2 commences on the commencement date of the HealthForce Connect Platform Agreement and shall continue in force until the third anniversary when it shall automatically extend for a 12-month period, unless terminated earlier in accordance with clause 14 (the **Term**).

2 Third Party Funding

- 2.1 Notwithstanding any current, pending, transferred or approved funding application by the Client (or any other third party) in relation to the Agency Services the Client remains liable for the Service Fee as set out herein.
- 2.2 The obligation of the Client to pay such fees to the Agency may only be transferred to a third party with the prior written consent of the Agency.

3 Agency Obligations

- 3.1 The Agency will provide Agency Services to the Client in consideration for the Client's paying the Service Fees to the Agency, subject to this Schedule 2.
- 3.2 For the purposes of the Conduct Regulations 2003, Agency acts as an employment business in relation to the introduction and supply of Temporary Workers pursuant to this Schedule 2.
- 3.3 The Agency will use reasonable endeavours to supply to the Client Temporary Workers suitable to carry out work of such nature as the Client notifies to the Agency. The Agency does not warrant, represent or undertake to find a suitable candidate for each vacancy notified to it by the Client.
- 3.4 When supplying a Temporary Worker to a Client, the Agency will inform the Client, so far as enabled to do so by information provided by the Temporary Worker to the Agency:
- 3.4.1 of the Temporary Worker's identity; and
- 3.4.2 of the Temporary Workers experience, training, qualifications and any authorisation required by law or a professional body to work on the Assignment.
- 3.5 Agency will maintain, for the term of this Schedule 2, employers' liability insurance in an amount not less than £10 million in respect of any one claim and public liability insurance (including malpractice cover for treatment risks, error and omissions) in an amount not less than £5 million in respect of any one claim.
- 3.6 The Agency actively promotes equality of opportunity for all, and seeks to prevent unlawful discrimination because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation.

4 Service Fees, Payment and Service Fee increase

- 4.1 The Client will pay to the Agency for the supply of the Temporary Worker as set out in your Rates Link the following:
- 4.1.1 the hourly Service Fees (rounded up to the nearest 15 minutes) in respect of each Temporary Worker for all hours (or part thereof) worked by that Temporary Worker;
- 4.1.2 National insurance which shall be calculated at 13.08% of the relevant hourly staff pay or other such amount as set out in the Rate Link from time to time;

- 4.1.3 other expenses such as the cost of hotel, subsistence, travelling and any other ancillary expenses ("Expenses") reasonably and properly incurred by the Temporary Worker in the provision of the Assignment;
- 4.1.4 Subject to the compliance with AWR regulations as set out in 5.1.6 Temporary Workers shall not have a default unpaid rest period within their timesheet and any such rest period shall be paid unless such break is added on the timesheet.
- 4.2 Your Rates Link will set out any discount to invoices that you may earn from time to time subject to achieving certain milestones in relation to booking hours. Agency reserves the right to disapply any such discount where Client fails to adhere to the payment terms as set out in clause 4.6.
- 4.3 Agency will submit its invoice to the Client in respect of the Service Fees and any Expenses weekly in arrears or such longer period at the Agency's sole discretion.
- 4.4 Unless specifically otherwise agreed between the parties in writing, the Agency does not agree to submit any details of shifts worked by Workers on to any systems operated by the Client directly or by third parties on behalf of the Client in order to receive payment.
- 4.5 Agency will submit invoices to the Client via email unless the Client has notified Agency that it wishes to access invoices 'online' through the Agency' online invoicing system ("MyNewcross"). To the extent that MyNewcross is or becomes unavailable at any time, Agency shall be entitled at its discretion to submit invoices to affected Client by email.
- 4.6 The payment of the Service Fees, national insurance, travel and other expenses will be made by the Client to the Agency within 28 days of the date of the Agency's invoice in respect of the amounts specified in the invoice. Time shall be of the essence in relation to payment of the Service Fees.
- 4.7 The Client shall pay by bank transfer or faster payment to a bank account nominated in writing (or as set out in the invoice) by Agency.
- 4.8 All amounts stated are exclusive of VAT and any other applicable taxes, which will if applicable be charged in addition at the rate in force at the time the services are provided.
- 4.9 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in this Schedule 2, then the Agency will be entitled:
 - 4.9.1 to charge interest (both before and after any judgment) on the outstanding amount at the rate of 8% per annum above the base lending rate of the Bank of England, accruing daily;
 - 4.9.2 to require the Client to pay, in advance, for any Agency Services, or any part of the Agency Services, which have not yet been performed;
 - 4.9.3 not to perform any further Agency Services, or any part of the Agency Services;
 - 4.9.4 to disapply any volume discount as set out in the Rates Link; and
 - 4.9.5 to withdraw without notice any Temporary Worker(s) currently Engaged by the Client.
- 4.10 When making a payment the Client will provide the same day a remittance advice that sets out quote the invoice numbers or shifts covered by such payment. Failure to provide this information will entitle the Agency to charge an administration fee of £25 for every such occurrence.
- 4.11 The Agency may set and vary credit limits and payment terms from time to time and has the right to withhold all further supplies of Agency Services without liability to the Client if the Client exceeds such credit limit or payment terms.
- 4.12 The Agency may increase its Rates during the Term provided that:
 - 4.12.1 The new Rate is communicated to the Client; and

4.12.2 The new Rate is applied at least 28 days after it is communicated.

5 **Client's obligations and acknowledgments**

5.1 The Client will:

- 5.1.1 specify its exact requirements by providing full details of the work for which the Temporary Worker is required and, in particular, by notifying the Agency when placing the order of:
 - (a) the date on which the Client requires the Temporary Worker to commence work and the duration, or likely duration, of the work;
 - (b) the location the Client requires the Temporary Worker to commence work;
 - (c) any special skills required for such work;
 - (d) any special health and safety matters about which the Agency is obliged to inform the Temporary Worker; and
 - (e) any requirements imposed by law or by any professional body which must be satisfied if the Temporary Worker is to fill the Assignment.
- 5.1.2 at the Agency's request at any time and from time to time, provide the Agency with the information specified in Regulation 14(3)(a) of the AWR 2010, within seven days of receiving that request;
- 5.1.3 not allow any Temporary Worker to undertake any work other than that which has been notified to the Agency by the Client in placing the order for that Temporary Worker in accordance with clause 4.1.1;
- 5.1.4 verify at the beginning of the Assignment that the Temporary Worker is suitable for the purposes for which the Temporary Worker is required and that they have the capability to carry out the duties required, including the operation of any machinery or vehicles;
- 5.1.5 be responsible for obtaining any certificate of sponsorship or permit needed to enable the Temporary Worker to work in the United Kingdom and for ensuring that the Temporary Worker satisfies any medical requirements or other qualifications that may be appropriate or required by law;
- 5.1.6 comply with its obligations under the AWR 2010 and in particular:
 - (a) insofar as it lies within the Client's power to do so, ensure that the Temporary Worker receives any rights in relation to basic working and employment conditions to which they are entitled under Regulation 5 of the AWR 2010;
 - (b) in accordance with Regulation 12 of the AWR 2010, ensure that, unless less favourable treatment is justified on objective grounds, the Temporary Worker is treated no less favourably than a comparable worker in relation to the collective facilities and amenities provided by the Client (as these terms are defined in that Regulation);
 - (c) in accordance with Regulation 13 of the AWR 2010, ensure that during the Assignment the Temporary Worker is informed of any relevant vacant posts with the Client to give the Temporary Worker the same opportunity as a comparable worker to find permanent employment with the Client;
- 5.1.7 do nothing to cause the Agency to be in breach of its obligations under the AWR 2010;
- 5.1.8 where the services require residence of a Temporary Worker at the Client's premises, the Client shall provide adequate accommodation for rest or sleep and meals for the Temporary Worker;
- 5.1.9 the Client shall ensure that the Temporary Worker is able to take the same refreshment breaks, meals and facilities as the Client's own staff (which shall in any event comply with requirements under applicable law);
- 5.1.10 any costs associated with refreshment breaks (which must be provided in accordance with applicable law), meals or any benefits in kind are not deductible from the Service Fees, unless otherwise agreed in writing by the parties;

- 5.1.11 comply with all other obligations, duties and regulations, whether statutory or otherwise including those relating to the place, nature or system of work, in any way arising from or directly or indirectly connected with the services rendered by a Temporary Worker;
 - 5.1.12 assist the Agency in complying with the Agency's duties under the Working Time Regulations 1998 by supplying any relevant information about the Assignment requested by the Agency;
 - 5.1.13 do nothing to cause the Agency to be in breach of its obligations under the Working Time Regulations 1998, and where the services of a Temporary Worker are required or may be required for more than 48 hours in any week, notify the Agency of this requirement before the commencement of that week;
 - 5.1.14 complete the services questionnaire in relation to VAT, as supplied to the Client from time to time, fully, accurately and honestly;
 - 5.1.15 to return such questionnaire as set out in 5.1.14 within 7 days of issue. The Agency reserves the right to suspend Services where any such questionnaire has not been returned; and
 - 5.1.16 to notify the Agency as soon as possible in the event that it becomes aware that the answers given in the questionnaire are no longer applicable.
- 5.2 The Client acknowledges and agrees that:
- 5.2.1 Temporary Workers supplied by the Agency are deemed to be under the supervision, direction and control of the Client from the time when they report to the Client to take up their duties until their Assignment ends;
 - 5.2.2 the Client is responsible for all acts, errors and omissions, whether wilful, negligent or otherwise, as if the Temporary Worker was the Client's employee;
 - 5.2.3 the Client will in all respects comply with all statutes, byelaws and other legal requirements and codes of practice to which the Client is ordinarily subject in respect of its own staff, including the Working Time Regulations 1998 and the Health and Safety at Work Act 1974.
- 5.3 The Client shall be responsible for insuring to full replacement value all personal furniture and belongings of individuals in their care and accepts that Agency shall not be responsible or have any liability for any loss of or damage to such individuals' personal items (including but not limited to cash, credit cards, cheques, certificates, documents or personal effects such as jewellery) unless the Client can demonstrate to Agency's satisfaction (acting reasonably), that the Temporary Worker has been negligent or fraudulent in respect of those individuals' belongings.
- 5.4 The Client will at all times treat all Temporary Workers with due respect and dignity and in particular must take all steps within its control to avoid any unlawful discriminatory treatment of each of them.
- 5.5 The Client:
- 5.5.1 confirms that it is not aware of anything which will cause a detriment to the interests of the Temporary Worker or the Client in any Assignment; and
 - 5.5.2 will inform the Agency immediately if it becomes aware of any circumstances which would render any Assignment detrimental to the interests of the Temporary Worker or the Client.
- 6 Time sheets**
- 6.1 At the end of each week of an Assignment, or at the end of the Assignment (whichever is the shorter period) the Agency will supply the Client with a timesheet. The Agency pays its workers weekly. The Client must sign the time sheet promptly and in the event the Client does not raise a bona fide dispute within 56 days in relation to such timesheet it will be deemed accepted.

6.2 The Client will inform the Agency as soon as reasonably practicable (and within 7 days in any event) of any disputed hours or applicable rate and the parties shall work in good faith to deal with those disputed hours. The Client will not be entitled to withhold payment in respect of any undisputed hours.

6.3 The Client shall ensure that only authorised individuals sign time sheets.

7 Temporary Workers

7.1 The Client will review the information provided by Agency in accordance with clause 3.4 and if (acting reasonably and in a non-discriminatory fashion) the Client is not satisfied with the proposed Temporary Worker, the Client shall notify Agency within 1 business day of receiving the information and in any event at least 24 hours prior to the Temporary Worker arriving at the Client premises to perform the Assignment so that Agency can attempt to find a suitable alternative Temporary Worker.

7.2 If (acting reasonably and in a non-discriminatory fashion) either party believes that a Temporary Worker is unsuitable to perform the relevant Assignment, once the Temporary Worker has arrived at the Client premises and/or the provision of services by the Temporary Worker has commenced (an "Unsatisfactory Temporary Worker"), then such party shall notify the other party in writing, giving the grounds for its dissatisfaction. Where Client does not raise suitability as an issue, the Client shall be deemed to have accepted the proposed Temporary Worker.

7.3 Upon notification by either party in accordance with clause 7.2, Agency will use reasonable endeavours to replace the Unsatisfactory Temporary Worker with another Temporary Worker as soon as is reasonably practicable. If Agency is unable to replace the Unsatisfactory Temporary Worker within 48 hours, the Client may terminate the Assignment immediately on notifying Agency in writing. The Client shall remain liable for payment of Service Fees due and payable for services already performed if the circumstances in clauses 7.2 and 7.3 arise.

7.4 If a Temporary Worker is absent for any reason during an Assignment, Agency will use its reasonable endeavours to provide another suitably qualified Temporary Worker to cover the absence. Agency will notify the Client if no suitable replacement is available and shall have no liability to the Client in respect of the absence.

7.5 It is the responsibility of the Client to ensure that it has proper controls in place in relation to the signatory of the time sheets.

8 Engagement of a Temporary Worker

8.1 Newcross' most valuable asset is its bank of workers. Newcross invests heavily in the recruitment, investigation and approval, training and development of all members of its staff. As such it is necessary for Newcross to protect its investment.

8.2 If, within 6 months following the Introduction of a Temporary Worker by Newcross to the Client, in circumstances where the Temporary Worker has not then been supplied by Newcross to the Client, the Client Engages the Temporary Worker, the Client will pay Newcross an introduction fee of £10,000 (where the Temporary Worker is a nurse) or £5,000 (where the Temporary Worker is a care worker) (the "Introduction Fee").

8.3 If, following the supply of a Temporary Worker by Newcross to the Client, the Client Engages the Temporary Worker within the Relevant Period, the Client will pay Newcross a transfer fee of £10,000 (where the Temporary Worker is a nurse) or £5,000 (where the Temporary Worker is a care worker) (the "Transfer Fee").

8.4 Introduction Fees and/or Transfer Fees will not be payable if the Client gives written notice to Newcross that it intends to hire (or continue to hire) the Temporary Worker on a full-time basis (i.e. 37.5 hours per week) for a period (or further period) of three months (i.e. 487.5 hours) ("Extended Assignment") before it Engages the Temporary Worker and the Client does in fact hire the Temporary Worker for that Extended Assignment. The Service Fees payable by the Client during the Extended Assignment will be calculated at the applicable rate.

8.5 If, within 6 months following the Introduction of a Temporary Worker by Newcross to the Client, in circumstances where the Temporary Worker has not then been supplied by Newcross to the Client, the Client introduces the Temporary Worker

to a third party who then Engages the Temporary Worker, the Client will pay Newcross a referral fee of £10,000 (where the Temporary Worker is a nurse) or £5,000 (where the Temporary Worker is a care worker).

- 8.6 If, following the supply of a Temporary Worker by Newcross to the Client, the Client introduces the Temporary Worker to a third party who then Engages the Temporary Worker within the Relevant Period, the Client will pay Newcross a referral fee of £10,000 (where the Temporary Worker is a nurse) or £5,000 (where the Temporary Worker is a care worker).

9 **Non-Solicitation**

- 9.1 Subject to clause 8, the Client agrees that it will not, either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of six months from, the end of the term of this Schedule 2, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any key executive of Agency who has worked on the services provided under this Schedule 2 at any time during the term of this Schedule 2.

10 **Telephone Booking and Online Booking Platform**

- 10.1 The Client may book Services with Agency by way of telephone or through the use of its online platforms.
- 10.2 The Agency has developed an automated online booking system which enables its clients to access Agency' information online, to ascertain staff availability and to place bookings (the "Montero System"). The Montero System also allows Agency to display nurse verification details and staff profiles (the "Profile Service").
- 10.3 Once the Client has placed an order, via an online platform or telephone it is the Client's responsibility to ensure that any such booking is correct by reviewing the MyNewcross or other such platform as released from time to time prior to the supply of the Temporary Worker.
- 10.4 Agency hereby grants the Client a non-exclusive, non-transferable, non-sublicensable and revokable licence to use the Montero System and Profile Service for the Client 's internal business administration activities for the term of this Schedule 2.
- 10.5 The Client is not permitted to grant access to the Montero System and Profile Service to any other person and such action will entitle Agency to terminate or suspend the Client's access to the Montero System and Profile Service with immediate effect.
- 10.6 The licence granted under this clause 10 shall terminate automatically upon termination of this Schedule 2.
- 10.7 The Agency will make enquiry of the Client's IT facilities in which the Client shall engage in full and complete answers. Where the Agency is satisfied with any such enquiry and compatibility with the Montero System and Profile Service is likely the Agency may:
- 10.7.1 provide the Client with a username and password to access the Montero System and Profile Service;
- 10.7.2 provide a virtual training session at the Client's premises (further training may be requested by the Client at a rate of £500 per day).
- 10.8 Agency will use reasonable endeavours to maintain the availability of the Montero and MyNewcross System and Profile Service but shall have no liability to the Client for any interruption or unavailability or the loss of any data.
- 10.9 Client acknowledges that the Services within this Schedule 2 are not contingent on any such use of the Montero System and/or Profile Service.
- 10.10 All software, support and maintenance are provided "as is," and Agency expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality, or merchantability, whether express, implied, or statutory. Agency will not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside the reasonable control of the Agency to the maximum extent permitted by law.

10.11 Agency does not make any representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any software or any content therein or generated therewith, or that: (a) the use of any software will be secure, timely, uninterrupted or error-free; (b) the software will operate in combination with any other hardware, software, system, or data; (c) the software (or any products, services, information, or other material purchased or obtained by you through the software) will meet your requirements or expectations; (d) errors or defects will be corrected; or (e) the software is free of viruses or other harmful components. You may have other statutory rights, but the duration of statutorily required warranties, if any, will be limited to the shortest period permitted by law.

11 **Confidentiality**

11.1 Each Party ('Receiving Party') will keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the confidential information of the Supplying Party for the purpose of and for performing the Receiving Party's obligations under this Schedule 2. The Receiving Party will inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 7.1, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

11.2 The obligations of clause 7.1 will not apply to any information which:

11.2.1 was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;

11.2.2 is, or becomes, publicly available through no fault of the Receiving Party;

11.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

11.2.4 was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or

11.2.5 is required to be disclosed by order of a court of competent jurisdiction.

11.3 The obligations set out in this clause will survive termination of this Schedule 2 for a period of 3 years.

12 **Data protection**

12.1 Each party shall be a Controller of the Shared Personal Data.

12.2 The Disclosing Party shall at all times comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under this Schedule 2. Nothing in this clause is intended to limit or exclude either party's responsibilities or liabilities under any Data Protection.

12.3 The Disclosing Party shall ensure that at all times:

12.3.1 all Shared Personal Data transferred to the Receiving Party is accurate and up-to-date and has at all times been collected, processed and transferred by and on behalf of the Disclosing Party in accordance with all Data Protection Laws;

12.3.2 that prior to any Shared Personal Data (or any part) being transferred to the Receiving Party from time to time: (a) each relevant Data Subject has been provided with sufficient information (in an appropriate form) so as to enable fair, transparent and lawful processing (including sharing) of the Shared Personal Data for the Permitted Purpose in accordance with the obligations of each party under all Data Protection Laws;

12.3.3 it identifies itself (without prejudice to the rights of any person to contact another person) in all information referred to in clause 12.3.2 as the contact point for all Data Subject Requests and Communications regarding the processing of the Shared Personal Data (and agrees that the Receiving Party may also identify the Disclosing Party as the contact point for such purposes in any information or notices);

12.3.4 the Disclosing Party is entitled to transfer and the Receiving Party is entitled to process all Shared Personal Data for the Permitted Purpose in accordance with all Data Protection Laws, including that Data Subjects have each to such transfer and other processing of their respective Shared Personal Data;

12.3.5 the Shared Personal Data is transferred to (and received by) the Receiving Party in a secure manner using appropriate technical and organisational security measures that comply with the obligations of each party under all Data Protection Laws;

12.3.6 it shall immediately notify the Receiving Party if it becomes aware of any change or circumstance which will, may or is alleged to impact the lawfulness of any processing of the Shared Personal Data by the Receiving Party (including if a Data Subject withdraws any necessary Consent or requests their Shared Personal Data is no longer processed or is erased or if any of the Shared Personal Data is not accurate or up-to-date), together with full details of the circumstances and (immediately once available) revised and corrected data;

12.3.7 it shall not by any act or omission cause the Receiving Party (or any other person) to be in breach of any Data Protection Laws; and

12.3.8 it shall keep copies of all notices and other information necessary to demonstrate its compliance with this clause.

12.4 Except as required by applicable law of the United Kingdom (or any part of the United Kingdom), the Receiving Party shall not transfer the Shared Personal Data to any country or territory outside the United Kingdom to any international organisation (as defined in the GDPR).

12.5 Subject to the remainder of this clause 12.5, as between the parties, responsibility for compliance with and responding to:

12.5.1 any Data Subject Request *falls on the party which first received such Data Subject Request*;

12.5.2 any Communication *falls on the party which receives the Communication from a communicator*; and

12.5.3 each party's respective obligations in respect of any Personal Data Breach (including notification of the Data Protection Supervisory Authority and/or Data Subject(s)) impacting or relating to any Shared Personal Data in the possession or control of the Disclosing Party (or any third party with whom it has shared such data) *falls on the Disclosing Party*

- 12.6 This clause does not restrict either party's right to perform any of its obligations under Data Protection Laws itself in the manner it determines (whether or not in addition to the other party having performed such obligation).
- 12.7 Each party shall promptly co-operate with and provide reasonable assistance, information and records to the other to assist each party with their respective compliance with Data Protection Laws and in relation to all Communications and Data Subject Requests.
- 12.8 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies.
- 12.9 Except as expressly stated in this clause each party shall pay its own costs and expenses incurred in connection with the performance of this clause 12.
- 13 **Limit of Liability and indemnity**
- 13.1 While the Agency will make reasonable efforts to ensure reasonable standards of skills, integrity and reliability in Temporary Workers and to comply with the Client's requirements, the Client accepts and agrees that the Agency gives no warranty as to the suitability of any Temporary Worker for any Assignment.
- 13.2 The Agency confirms that, in supplying any Temporary Worker to the Client, it is not aware of anything which will cause any detriment to the interests of that Temporary Worker or the Client if the Temporary Worker fulfils the Assignment.
- 13.3 Neither the Agency nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the introduction or supply of a Temporary Worker to the Client or with any failure by the Agency to introduce or supply a Temporary Worker for all or part of any period booked by the Client (except that in the latter case the Client may be entitled to a reduction or cancellation of the Service Fee payable), unless such loss, damage, costs or expenses are the direct result of the negligent acts or omissions of the Agency.
- 13.4 The Agency will not be liable for any loss, injury, damage, expense or delay arising from, or in any way connected with:
- 13.4.1 any failure of the Temporary Worker to meet the Client's requirements for all or any of the purposes for which the Temporary Worker is required by the Client; or
- 13.4.2 any act or omission of a Temporary Worker, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or
- 13.4.3 any loss, injury, damage, expense or delay suffered by a Temporary Worker.
- 13.5 Except in the case of death or personal injury caused by the Agency's negligence, the liability of the Agency under or in connection with this Schedule 2 whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever will not exceed the Service Fee(s) paid or due to be paid by the Client to the Agency under this Schedule 2. The Agency will not be liable for any matter not reported to it within 28 days of its occurrence.
- 13.6 Agency will not be liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by Client of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- 13.7 For the purposes of this clause 'Claims' will mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' will mean all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever. The Client will indemnify and hold harmless the Agency from and against all Claims and Losses arising from loss, damage, liability, injury to the Agency, its employees and third parties, by reason of or arising out of:
- 13.7.1 any Client breach of this Schedule 2;
- 13.7.2 any loss, injury, expense or delay suffered or incurred by a Temporary Worker, however caused;

- 13.7.3 any Client breach of Client obligations as set out in this Schedule 2;
- 13.7.4 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Temporary Worker, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and
- 13.7.5 any loss, injury or delay suffered or incurred by the Agency as a result of any act or omission of the Client that arises directly or indirectly out of or is in any way connected with the relevant Assignment, any information supplied by the Client to the Agency or the Client's breach of this Schedule 2.
- 13.8 Each of the Parties acknowledges that, in entering into this Schedule 2, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Schedule 2, and any conditions, warranties or other terms implied by statute or common law are excluded from this Schedule 2 to the fullest extent permitted by law. Nothing in this Schedule 2 excludes liability for fraud.
- 13.9 Notwithstanding any other provision of this Schedule 2, the liability of the parties shall not be limited in any way in respect of the following:
- 13.9.1 death or personal injury caused by negligence;
- 13.9.2 fraud or fraudulent misrepresentation; or
- 13.9.3 any other losses which cannot be excluded or limited by applicable law.
- 14 **Termination of an Assignment**
- 14.1 The Client may terminate an Assignment at any time on giving 24 hours' notice in writing to Agency.
- 14.2 Agency may, at its sole discretion, charge the full amount of any Service Fees which would have become due in respect of any Assignment which is terminated by the Client on less than 24 hours' notice.
- 14.3 If the Client breaches any term of this Schedule 2, or in circumstances, which, in Agency's reasonable opinion, make the completion of an Assignment untenable the Agency reserves the right to withdraw, without notice, any Temporary Workers supplied without incurring any liability to the Client.
- 14.4 In the event Agency withdraws Temporary Worker in accordance with 14.3 the Client will pay for all Agency Services provided in respect of the relevant Temporary Worker.
- 15 **Termination of this Schedule 2**
- 15.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Schedule 2, at any time, on written notice (that will take effect as specified in the notice) to the other Party ('Other Party'):
- 15.1.1 if the Other Party is in material breach of its obligations under this Schedule 2. If the breach is capable of remedy within 10 days, the breach is not remedied within 10 days by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
- 15.1.2 if the Other Party passes a resolution for its winding up or for the appointment of an administrator, a liquidator or administrator is appointed or a winding up order is made in relation to the Other Party (other than in circumstances of a solvent amalgamation or reconstruction), a receiver or administrative receiver is appointed in relation to the Other Party or its assets, the Other Party has a freezing order made against it or becomes insolvent, or becomes subject to a moratorium or a company voluntary arrangement under the Insolvency Act 1986 or a restructuring plan under Part 26A of the Companies Act 2006 or the Other Party makes any arrangement or composition with or for the benefit of its creditors or takes or suffers any similar or analogous action in consequence of debt; or
- 15.1.3 The Agency may without cause terminate this Schedule 2 with 1 months' notice.

15.2 On termination of this Schedule 2, the Client will pay for all Agency Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Agency for the performance of the Agency Services prior to the date of termination.

15.3 Any clauses in this Schedule 2 that are expressly stated, or by implication intended, to apply after expiry or termination of this Schedule 2 shall continue in full force and effect after such expiry or termination.

16 **Anti-bribery**

16.1 For the purposes of clause 16 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.

16.2 The Client shall ensure that it and each person referred to in clauses 16.2.1 to 16.2.3 (inclusive) does not, by any act or omission, place the Agency in breach of any Bribery Laws. The Client shall comply with all applicable Bribery Laws, ensure that it has in place adequate procedures to prevent any breach of clause 16 and ensure that:

16.2.1 all of the Client's personnel and all direct and indirect subcontractors of the Client;

16.2.2 all others associated with the Client; and

16.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 16.2.1 and/or 16.2.2,

involved in connection with this Schedule 2, so comply.

16.3 Without limitation to clause 16.2, the Client shall not make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

16.4 The Client shall immediately notify the Agency as soon as it becomes aware of a breach of any of the requirements in this clause 16.

17 **Modern slavery**

17.1 The Client undertakes, warrants and represents that:

17.1.1 neither the Client nor any of its officers, employees, agents or subcontractors has:

(a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

17.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

17.1.3 it shall notify the Agency immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Client's obligations under Clause 17. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Client's obligations.

18 **General**

18.1 **Force majeure**

Neither Party will have any liability under or be deemed to be in breach of this Schedule 2 for any delays or failures in performance of this Schedule 2 which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Schedule 2 by written notice to the other Party.

18.2 **Amendments**

No amendment or variation of this Schedule 2 will be valid unless notified to the Client by the Agent or agreed by Parties.

18.3 **Assignment**

The Client may not assign, subcontract or encumber any right or obligation under this Schedule 2, in whole or in part, without the Agent's prior written consent (such consent not to be unreasonably withheld or delayed).

18.4 **Waiver**

No failure or delay by the Agency in exercising any right, power or privilege under this Schedule 2 will impair the same or operate as a waiver of the same nor will 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 Schedule 2 are cumulative and not exclusive of any rights and remedies provided by law.

18.5 **Agency, partnership, etc**

This Schedule 2 will 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 Schedule 2. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

18.6 **Severance**

If any provision of this Schedule 2 is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Schedule 2 and rendered ineffective as far as possible without modifying the remaining provisions of this Schedule 2, and will not in any way affect any other circumstances of or the validity or enforcement of this Schedule 2.

18.7 **Announcements**

No Party will issue or make any public announcement or disclose any information regarding this Schedule 2 unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no Party will be prohibited from issuing or making any such

public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange

18.8 **Set off**

Except as expressly set out in this Schedule 2 each party shall pay all sums that it owes to the other party under this Schedule 2 without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

19 **Notices**

19.1 Any notice to be given under this Schedule 2 must be in writing, signed by or on behalf of the party giving it and must be sent to:

19.2 in the case of the Agency, Finance Department, Waterside, Berry Pomeroy, Totnes, Devon, TQ9 6LH together with a CC sent to Legalteam@newcrosshealthcare.com; and

19.3 in the case of the Client, the last postal and/or email address to which the Agency has sent correspondence to the Client.

20 **Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 Schedule 2 is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

21 **Applicable law and jurisdiction**

The validity, construction and performance of this Schedule 2 is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Schedule of Defined Terms

1 Definitions

In these Schedule 2:

Agency means Newcross Healthcare Solutions Limited, a company registered in England and Wales under company number 03184321, and whose registered office is at Waterside, Berry Pomeroy, Totnes, Devon, TQ9 6LH;

Agency Services means the supply to the Client by the Agency of Temporary Workers, either for itself or for a Service User for vacancies of which the Client has notified the Agency either on behalf of itself or a Service User;

Schedule 2 means this Schedule 2;

Assignment means the period during which a Temporary Worker performs services or carries out work for or on behalf of the Client, or as instructed by the Client for a Service User, beginning when the Temporary Worker first reports to the Client to take up duties (or, if earlier, the commencement of such work or services by the Temporary Worker) and ending on the cessation by the Temporary Worker of all such work or services;

AWR 2010 means the Agency Workers Regulations 2010;

Claims has the meaning given in clause 13.7;

Client the entity as set out in the Client Onboarding Form;

Commencement Date	means the date of signature by the Client or the date on which the Assignment commences, whichever is the first event;
Conduct Regulations 2003	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
Control	means, in relation to a Party, direct or indirect beneficial ownership of more than 50% of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be;
Controller	has the meaning given in Data Protection Laws;
Data Protection Laws	means, as applicable to either party the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003; and any other applicable law relating to the processing, privacy and/or use of Personal Data;
Data Subject	has the meaning given in Data Protection Laws;
Engage(s) (or Engagement or Engaged)	means the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of a Temporary Worker by or on behalf of the Client;
Losses	has the meaning given in clause 13.7;
Other Party	has the meaning given in clause 10.1;
Order Form	means the Order Form as annexed to this Schedule 2;
Parties	means the Agency and the Client, and 'Party' will mean either one of them;
Permitted Purpose	means the Services including the management of such services in accordance with relevant professional regulators of health care services;
Personal Data	has the meaning given in Data Protection Laws;
Rates and Scope of Services Form	means the rates as set out from time to time on the Client's Rate Link;
Rate Link	means any notification of the Client's rates as set by the Agency from time to time;
Receiving Party	has the meaning given in clause 7;
Relevant Period	shall have the meaning set out in regulation 10(5) and (6) of the Conduct Regulations 2003;
Supplying Party	has the meaning given in clause 11;
Service User	means an individual who receives care services;
Service Fee(s)	means the Service Fees payable by the Client to the Agency resulting from the Engagement of one or more Temporary Worker(s) at the rates set out in the Order Form;
Shared Personal Data	means Personal Data received by the Receiving Party from or on behalf of the Disclosing Party, or otherwise made available by the Disclosing Party for the Permitted Purpose;

Temporary Worker

means a person supplied by the Agency to the Client to work temporarily for the Client, under the Client's direction and supervision, who has a contract of employment with the Agency or a Schedule 2 with the Agency to perform work or services personally.

Schedule 3: Client and Third Party Agency Terms

[INSERT CLIENT (company number xxxxxxxxxx) a company incorporated in England and Wales whose registered office is at xxxxxxxxxx (**Client**); and

[INSERT] (company number [INSERT]) a company incorporated in England and Wales whose registered office is at [INSERT] **Agency**).

Terms and Conditions

1 Definitions

1.1 In these Terms and Conditions:

Affiliate	means, in relation to a Party, any person that Controls, is Controlled by, or is under common Control with that Party;
Agency	means as defined in the parties to this Agreement;
Agreement	means the agreement containing these Terms and Conditions;
Assignment	means the period during which a Temporary Worker performs services or carries out work for or on behalf of the Client, beginning when the Temporary Worker first reports to the Client to take up duties (or, if earlier, the commencement of such work or services by the Temporary Worker) and ending on the cessation by the Temporary Worker of all such work or services;
AWR 2010	means the Agency Workers Regulations 2010;
Break Period	has the meaning given in clause 3.7.2;
Client	means as defined in the parties to this Agreement;
Commencement Date	means the date in which the last party signs this Agreement;
Conduct Regulations 2003	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;
Control	means, in relation to a Party, direct or indirect beneficial ownership of more than 50% of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be;
Engage(s) (or Engagement Engaged)	means the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of a Temporary Worker by or on behalf of the Client;
Fee(s)	means the fees payable by the Client to the Agency resulting from the Engagement of one or more Temporary Worker(s) at the rates agreed with Newcross via the HealthForce App (including any cancellation fees that may apply from time to time);
HealthForce App	means the online electronic timesheet and invoice processing system used by Newcross (company number 03184321) the provision of the which allows the Client to create assignments, authorise bookings, facilitates the creation of candidate profiles (including relevant compliance documentation) and reporting;
Parties	means the Agency and the Client, and 'Party' will mean either one of them;
Personal Data	means any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to: a. an identifier such as a name, an identification number, location data or an online identifier, or b. one or more factors specific to the physical,

	physiological, genetic, mental, economic, cultural or social identity of the individual;
Receiving Party	has the meaning given in clause 7;
Recruitment Services	means the supply to the Client by the Agency of Temporary Workers for vacancies of which the Client has notified the Agency;
Relevant Period	has the meaning given in clause 3.7;
Supplying Party	has the meaning given in clause 7;
Temporary Worker	means a person supplied by the Agency to the Client to work temporarily for the Client, under the Client's direction and supervision, who has a contract of employment with the Agency or an agreement with the Agency to perform work or services personally; and
Transfer Fee	means the amount set out in the Fees where applicable.

2 Recruitment Services

- 2.1 The Agency will provide the Recruitment Services to the Client in consideration for the Client's paying the Fees to the Agency, subject to these Terms and Conditions.
- 2.2 The Agency will exclusively use the HealthForce App to arrange Assignments.
- 2.3 Where the Agency elects to undertake the supply to the Client of Temporary Workers it will provide suitable Temporary Workers to carry out work of such nature as the Client notifies to the Agency via the HealthForce App or by such other means as may be used from time to time.
- 2.4 When supplying a Temporary Worker to a Client, the Agency will inform the Client, so far as enabled to do so by information provided by the Temporary Worker to the Agency:
 - 2.4.1 of the Temporary Worker's identity;
 - 2.4.2 that the Temporary Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work on the Assignment (including, where relevant, information provided by a Disclosure and Barring Service criminal records check);
 - 2.4.3 whether the Temporary Worker is employed by the Agency under a contract of service or apprenticeship or a contract for services; and
 - 2.4.4 that the Temporary Worker is willing to work on the Assignment.
 - 2.4.5 As a minimum all Temporary Workers have:
 - (a) an Enhanced DBS to be renewed in accordance with CQC standards;
 - (b) a minimum of 2 references from previous employment;
 - (c) a minimum of 3 months relevant work experience in the last 12 months;
 - (d) a Right to Work in the UK with documentation pertaining to such Right to Work qualified by the Agency;
 - (e) completed and can evidence Moving and Handling training; and

- (f) completed and can evidence Basic Life Support training.

2.5 The Agency will:

- 2.5.1 pay each Temporary Worker the wages and reimbursement of expenses to which the Temporary Worker is entitled by reason of carrying out work for the Client;
- 2.5.2 where appropriate, make deductions and account to HM Revenue and Customs for income tax in respect of the remuneration of each Temporary Worker; and
- 2.5.3 where appropriate, make deductions and account for all necessary national insurance contributions relevant to the remuneration of each Temporary Worker.

2.6 The Agency actively promotes equality of opportunity for all, and seeks to prevent unlawful discrimination because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation.

2.7 Where the Client has required the Agency to supply a Temporary Worker for a vacancy which includes driving motor vehicles, the Agency will take all reasonable steps to enquire whether the Temporary Worker is the holder of a current licence to drive a vehicle of the class or description that the Client has notified to the Agency.

2.8 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 entails caring for or attending one or more persons under the age of 18 or any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, the Agency will take all reasonably practicable steps:

2.8.1 to obtain and offer to provide to the Client:

- (a) copies of any relevant qualifications or authorisations of the Temporary Worker;
- (b) two references from persons not related to the Temporary Worker who have agreed that the references they provide may be disclosed to the Client or details of such steps taken to acquire any references; and

2.8.2 to confirm that the Temporary Worker is suitable for the Assignment.

2.9 The Client may change the minimum requirements of a Temporary Worker by giving notice to the Agency of the change via the HealthForce App or by such other means as may be used from time to time.

2.10 The Agency will require that each Temporary Worker will deliver to the Client, on the termination of an Assignment or at any time during it, all documents, papers, materials and other property (including any copies) belonging to or relating to the business of the Client which may be in the Temporary Worker's possession or under their control.

2.11 The Agency shall at all times adhere to the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

3 Fees and payment

3.1 The Client will pay to the Agency for the supply of the Temporary Worker:

- 3.1.1 the hourly Fees in respect of each Temporary Worker for all approved hours worked by that Temporary Worker as set out within the HealthForce App and any applicable VAT thereon; and

- 3.1.2 such travel and other expenses as have been agreed by the Parties in advance and any applicable VAT thereon.
- 3.2 The payment of the Fees will be made by the Client to the Agency within **35** days of the date of the Agency's invoice in respect of amounts specified in the invoice.
- 3.3 If the Client cancels an Assignment after requesting the Agency to supply a Temporary Worker but before the Temporary Worker has started work, the Client will not be liable for any Fees.
- 3.4 Subject to clause 3.6, if the Client Engages any Temporary Worker directly, or indirectly (other than through the Agency), the Client will:
 - 3.4.1 immediately notify the Engagement to the Agency; and
 - 3.4.2 pay to the Agency an introduction fee calculated in accordance with the Agency's rates for such fees in force at the time of the Engagement; or
 - 3.4.3 if the Client so elects by notice in writing to the Agency, hire the Temporary Worker for an extended period of hire of **12** weeks (commencing on the date the Client Engaged the Temporary Worker directly, or indirectly (other than through the Agency)) in respect of which the Client will pay to the Agency the Transfer Fee.
- 3.5 Subject to clause 3.6, if the Client effectively introduces (whether directly or indirectly) any Temporary Worker to any third party, including any Affiliate of the Client, and that introduction results in the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of the Temporary Worker by that third party, the Client will:
 - 3.5.1 immediately notify the Engagement to the Agency; and
 - 3.5.2 pay to the Agency an introduction fee calculated in accordance with the Agency's rates for such fees in force at the time of the Engagement.
- 3.6 Clauses 3.4 and 3.5 will not apply if the Temporary Worker is Engaged by the Client, or begins working for the Client pursuant to being supplied by another employment business/agency, or is employed or Engaged by the third party, after the end of the Relevant Period.
- 3.7 In clause 3.6, 'Relevant Period' means whichever of the following periods that ends later:
 - 3.7.1 the period of eight weeks commencing on the day after the day on which the Temporary Worker last worked for the Client; or
 - 3.7.2 the period of 14 weeks commencing on the first day on which the Temporary Worker, having been supplied by the Agency, worked for the Client. In determining the first day, no account will be taken of any supply that occurred prior to a Break Period. A 'Break Period' is a period, which lasts for more than 42 days, during which that Temporary Worker did not work for the Client pursuant to being supplied by the Agency.
- 3.8 All amounts stated are exclusive of VAT which will if applicable be charged in addition at the rate in force at the time of supply to the Client.
- 3.9 Where any Temporary Worker is actively working at the Client location for another agency, the Agency shall not be entitled to invoice for such Temporary Worker.

4 Client's obligations and acknowledgments

4.1 The Client will:

- 4.1.1 specify its requirements by providing full details of the work for which the Temporary Worker is required and, in particular, by notifying the Agency when placing the order of:
 - (a) any special skills required for such work;
 - (b) any special health and safety matters about which the Agency is obliged to inform the Temporary Worker; and
 - (c) any requirements imposed by law or by any professional body which must be satisfied if the Temporary Worker is to fill the Assignment.
- 4.1.2 at the Agency's written request at any time and from time to time, provide the Agency with the information specified in Regulation 14(3)(a) of the AWR 2010, within 7 days of receiving that request;
- 4.1.3 not allow any Temporary Worker to undertake any work other than that which has been notified to the Agency by the Client in placing the order for that Temporary Worker in accordance with clause 4.1.1;
- 4.1.4 verify at the beginning of the Assignment that the Temporary Worker is suitable for the purposes for which the Temporary Worker is required and that they have the capability to carry out the duties required, including the operation of any machinery or vehicles;
- 4.1.5 be responsible for obtaining any certificate of sponsorship or permit needed to enable the Temporary Worker to work in the United Kingdom and for ensuring that the Temporary Worker satisfies any medical requirements or other qualifications that may be appropriate or required by law;
- 4.1.6 comply with its obligations under the AWR 2010 and in particular:
 - (a) insofar as it lies within the Client's power to do so, ensure that the Temporary Worker receives any rights in relation to basic working and employment conditions to which they are entitled under Regulation 5 of the AWR 2010;
 - (b) in accordance with Regulation 12 of the AWR 2010, ensure that, unless less favourable treatment is justified on objective grounds, the Temporary Worker is treated no less favourably than a comparable worker in relation to the collective facilities and amenities provided by the Client (as these terms are defined in that Regulation);
 - (c) in accordance with Regulation 13 of the AWR 2010, ensure that during the Assignment the Temporary Worker is informed of any relevant vacant posts with the Client to give the Temporary Worker the same opportunity as a comparable worker to find permanent employment with the Client.
- 4.1.7 do nothing to cause the Agency to be in breach of its obligations under the AWR 2010;
- 4.1.8 comply with all other obligations, duties and regulations, whether statutory or otherwise including those relating to the place, nature or system of work, in any way arising from or directly or indirectly connected with the services rendered by a Temporary Worker;

- 4.1.9 assist the Agency in complying with the Agency's duties under the Working Time Regulations 1998 by supplying any relevant information about the Assignment requested by the Agency; and
- 4.1.10 do nothing to cause the Agency to be in breach of its obligations under the Working Time Regulations 1998, and where the services of a Temporary Worker are required or may be required for more than 48 hours in any week, notify the Agency of this requirement before the commencement of that week.
- 4.2 The Client agrees that each Temporary Worker will be treated as if they are the employee of the Client throughout the duration of the Assignment and undertakes to exercise all appropriate supervision, direction and control over the manner, time and place in which each Temporary Worker carries out their work for the Client.
- 4.3 The Client acknowledges that each Temporary Worker supplied to the Client for purposes which include the driving of vehicles is supplied to the Client on the Client's express warranty and undertaking that the Client is the holder of a valid operator's licence where this is required and will:
 - 4.3.1 take all necessary steps to ensure that each Temporary Worker complies with all applicable road transport legislation;
 - 4.3.2 take all steps that may be required by law in relation to the insurance, maintenance and safety of vehicles, and in particular:
 - (a) satisfy itself that the vehicles are roadworthy and properly maintained, and
 - (b) in no circumstances require the Temporary Worker to check such matters; and
 - 4.3.3 control the driving duties of each Temporary Worker, their journeys and hours of work and comply with all statutory duties in relation to the Temporary Worker's driving duties and to driving licences, tachographs and logbooks.
- 4.4 The Client acknowledges and agrees that:
 - 4.4.1 Temporary Workers supplied by the Agency are the employees of the Agency;
 - 4.4.2 Temporary Workers supplied by the Agency are deemed to be under the supervision, direction and control of the Client from the time when they report to the Client to take up their duties until their Assignment ends;
 - 4.4.3 the Client is responsible for all acts, errors and omissions, whether wilful, negligent or otherwise, as if the Temporary Worker was the Client's employee;
 - 4.4.4 the Client will in all respects comply with all statutes, byelaws and other legal requirements and codes of practice to which the Client is ordinarily subject in respect of its own staff, including the Working Time Regulations 1998 and the Health and Safety at Work Act 1974;
 - 4.4.5 the Client will provide adequate employer's and public liability insurance cover for the Temporary Worker during all Assignments; and
 - 4.4.6 if the Client reasonably considers the Temporary Worker to be unsatisfactory, it will make a complaint to the Agency by telephone and confirm it in writing within one day of the finding, but will not have the right to withhold from the Agency payment of any Fee due.

- 4.5 The Client will at all times treat all Temporary Workers with due respect and dignity and in particular must take all steps within its control to avoid any unlawful discriminatory treatment of each of them.
- 4.6 The Client:
- 4.6.1 confirms that it is not aware of anything which will cause a detriment to the interests of the Temporary Worker or the Client in any Assignment; and
 - 4.6.2 will inform the Agency immediately if it becomes aware of any circumstances which would render any Assignment detrimental to the interests of the Temporary Worker or the Client.

5 Time sheets

- 5.1 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 will authorise the Agency's time sheet for each Temporary Worker verifying the number of hours worked by that Temporary Worker during that week in the HealthForce App. The client shall use its reasonable endeavours to approve or reject any timesheets within 30 days.
- 5.2 The Client's electronic approval of the time sheet will be confirmation of the number of hours worked. If the Client does not authorise the time sheet because it disputes the number of hours claimed, the Client will inform the Agency as soon as reasonably practicable and will co-operate fully and promptly with the Agency to establish what hours, if any, were worked by the Temporary Worker. Any failure by the Client to sign the time sheet will not absolve the Client's obligation to pay the Fees in respect of the hours worked by the Temporary Worker.
- 5.3 The Temporary Worker will be paid as appropriate by the Agency immediately on receipt of a time sheet authorised by the Client, which will be deemed conclusive evidence that the Client:
- 5.3.1 is satisfied with the work done by the Temporary Worker;
 - 5.3.2 agrees to and accepts these Terms and Conditions; and
 - 5.3.3 agrees to pay the Fees in accordance with clause 3 in full and without dispute or deduction.
- 5.4 The Client will not be entitled to decline to sign a time sheet on the grounds that it is dissatisfied with the Temporary Worker's work. In cases of unsatisfactory work, the Client should apply the provisions of clause 6.

6 Termination of an Assignment

- 6.1 The Client or the Agency or the Temporary Worker may terminate an Assignment at any time subject to at least 24 hours notice.
- 6.2 The Client undertakes to properly supervise the Temporary Worker to ensure that the Temporary Worker works to the standards that the Client expects. If the Client reasonably considers that the services of the Temporary Worker are unsatisfactory, the Client may terminate the Assignment by directing the Agency to remove the Temporary Worker.
- 6.3 If an Assignment is terminated early, the Agency may reduce or cancel the Fees for the time worked by that Temporary Worker, provided that:

- 6.3.1 the Assignment terminates within 1.5 hours of the Temporary Worker's commencing the Assignment; and
- 6.3.2 the Client provides to the Agency confirmation in writing of the unsuitability of the Temporary Worker, including reasonably satisfactory evidence, within 2 hours of the termination of the Assignment.
- 6.4 The Client will notify the Agency immediately, and in any event within 1.5 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 The Agency will notify the Client without delay 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 will terminate the Assignment.

7 Confidentiality

- 7.1 Each Party ('Receiving Party') will keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the confidential information of the Supplying Party for the purpose of and for performing the Receiving Party's obligations under this Agreement. The Receiving Party will inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 7.1, and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 7.2 The obligations of clause 7.1 will not apply to any information which:
 - 7.2.1 was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
 - 7.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
 - 7.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
 - 7.2.4 was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
 - 7.2.5 is required to be disclosed by order of a court of competent jurisdiction.
- 7.3 The obligations set out in this clause will survive termination of this Agreement.

8 Data protection

- 8.1 The parties will comply with their respective obligations under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 and/or other applicable data protection legislation.
- 8.2 The Agency will, before passing Personal Data relating to any Temporary Worker to the Client in accordance with clause 2.4:
 - 8.2.1 inform the Temporary Worker that the Client will be holding the Temporary Worker's Personal Data; and
 - 8.2.2 provide the Temporary Worker with a copy of the Client's data protection privacy notice.

9 Warranties, liability and indemnities

- 9.1 While the Agency will make reasonable efforts to ensure reasonable standards of skills, integrity and reliability in Temporary Workers and to comply with the Client's requirements, the Client accepts and agrees that the Agency gives no warranty as to the suitability of any Temporary Worker for any Assignment.
- 9.2 The Agency confirms that, in supplying any Temporary Worker to the Client, it is not aware of anything which will cause any detriment to the interests of that Temporary Worker or the Client if the Temporary Worker fulfils the Assignment.
- 9.3 Neither the Agency nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the introduction or supply of a Temporary Worker to the Client or with any failure by the Agency to introduce or supply a Temporary Worker for all or part of any period booked by the Client (except that in the latter case the Client may be entitled to a reduction or cancellation of the Fee payable), unless such loss, damage, costs or expenses are the direct result of the negligent acts or omissions of the Agency. In particular, but without limitation, the Agency will not be liable for any loss, injury, damage, expense or delay arising from, or in any way connected with:
- 9.3.1 any failure of the Temporary Worker to meet the Client's requirements for all or any of the purposes for which the Temporary Worker is required by the Client; or
 - 9.3.2 any act or omission of a Temporary Worker, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; or
 - 9.3.3 any loss, injury, damage, expense or delay suffered by a Temporary Worker.
- 9.4 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

10 Termination of this Agreement

- 10.1 Without prejudice to the other remedies or rights a Party may have, either Party may terminate this Agreement, at any time, on written notice (that will take effect as specified in the notice) to the other Party ('Other Party'):
- 10.1.1 if the Other Party is in material breach of its obligations under this Agreement. If the breach is capable of remedy within 14 days, the breach is not remedied within 14 days by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied; or
 - 10.1.2 if the Other Party passes a resolution for its winding up or for the appointment of an administrator, a liquidator or administrator is appointed or a winding up order is made in relation to the Other Party (other than in circumstances of a solvent amalgamation or reconstruction), a receiver or administrative receiver is appointed in relation to the Other Party or its assets, the Other Party has a freezing order made against it or becomes insolvent, or becomes subject to a moratorium or a company voluntary arrangement under the Insolvency Act 1986 or a restructuring plan under Part 26A of the Companies Act 2006 or the Other Party makes any arrangement or composition with or for the benefit of its creditors or takes or suffers any similar or analogous action in consequence of debt.

- 10.2 On termination of this Agreement, the Client will pay for all Recruitment Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Agency for the performance of the Recruitment Services prior to the date of termination.

11 General

11.1 Force majeure

Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

11.2 Amendments

No amendment or variation of this Agreement will be valid unless confirmed as agreed, in writing, by an authorised signatory of each Party.

11.3 Assignment

Subject to the following sentence, neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party. A Party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

11.4 Entire agreement

This Agreement contains the whole agreement between the Parties in respect of the supply of Temporary Resource and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

11.5 Waiver

No failure or delay by the Agency in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will 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.

11.6 Agency, partnership, etc

This Agreement will 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 will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

11.7 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

11.8 Announcements

No Party will issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms. However, no Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

11.9 Interpretation

In this Agreement unless the context otherwise requires:

- 11.9.1 words importing any gender include every gender;
- 11.9.2 words importing the singular number include the plural number and vice versa;
- 11.9.3 words importing persons include firms, companies and corporations and vice versa;
- 11.9.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 11.9.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 11.9.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 11.9.7 the headings to the clauses and paragraphs of, and schedules to, this Agreement are not to affect the interpretation;
- 11.9.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 11.9.9 where the word 'including' is used in this Agreement, it will be understood as meaning 'including without limitation'.

12 Notices

Any notice to be given under this Agreement must be in writing, signed by or on behalf of the party giving it and must be sent to registered address of the relevant party.

13 Applicable law and jurisdiction

The validity, construction and performance of this Agreement is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

14 Third parties

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

Schedule 4

HealthForce Terms of use

- 1 The Client shall not use the HealthForce App other than as expressly set out in this Agreement without the prior written consent of Newcross. In particular the Client shall not use the HealthForce App to provide services to any third party nor use or allow any third party to use the HealthForce App in a live environment except as expressly set out in this Agreement.
- 2 The Client has no right to, shall not and shall not permit any third party to, copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to HealthForce App in whole or in part except, in the case of copying and decompilation, in the circumstances required to be permitted by Newcross by law.
- 3 The Client shall permit Newcross to inspect and have access to any premises, and to the computer equipment located there, on which the HealthForce App is stored, accessed or used, and any records kept pursuant to this Agreement, for the purposes of ensuring that the Client is complying with the terms of this Agreement, provided that Newcross provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.
- 4 The Clients individual sites and authorisers shall cease use of the HealthForce App and shall forthwith remove and destroy (to the extent technically and reasonably practicable) any copies of the HealthForce App which it has in its possession, power or control at the date of termination of this Agreement unless and to the extent and for the period that it needs to use the HealthForce App in respect of any Assignment which continues following termination .

Schedule 5

Data Processing Agreement (DPA)

This DPA is entered into with the purpose of ensuring compliance with the General Data Protection Regulations 2016 and associated UK law regarding data protection (**GDPR**). As such, it sets out the terms and conditions under which personal data regarding agency outsourcing solutions held by HealthForce App (the Data Controller; referred to in this document as the Client) will be processed by Newcross (the Data Processor; referred to in this document as the Supplier).

Nothing within this Agreement relieves the supplier of its own direct responsibilities and liabilities under the GDPR.

1 Terms

1.1 Under this Agreement the Client provides information covering: name, address, e-mail, phone number, mobile phone number (personal data) to the Supplier to enable it to provide the Client with a temporary agency staff outsourcing solution and the HealthForce App platform usage for the duration of the main Agreement. During this period, the supplier shall process the personal data in compliance with the GDPR. At the end of this period the supplier shall:

1.1.1 delete or return Personal Data (and any copies of Personal Data) unless retention is required by applicable law (in which case, the supplier must advise the Client of the law on which it relies) to the Client:

- (a) on termination of this Agreement;
- (b) without delay where the processor is no longer required to process the Personal Data; and
- (c) upon the Client's written request (which shall excuse the processor from its obligations to the extent that such request means it is unable to meet them).

1.2 In carrying out the processing activities under this DPA, the Supplier undertakes that it will process the personal data mentioned above strictly in accordance with the written instructions from the Client, unless required to do so by law – in this situation, the Supplier shall inform the Client beforehand (unless the law has mandated otherwise).

1.3 The Supplier shall provide the Client with all the information that is needed to show that that both parties have met the obligations under GDPR.

1.4 The Supplier will treat the personal, and any other information provided by the Client as confidential, and will ensure that access to the personal data is limited to only those employees who require access to it for the purpose of fulfilling the activities to which this DPA relates.

1.5 The Supplier must obtain a commitment of confidentiality from anyone, including its employees and staff, it allows to process the personal data, unless they are already under such a duty by law.

1.6 The Supplier shall ensure that its employees/staff have undergone training in the law of data protection.

1.7 The following sub-processors will have access to the Personal Data:

- 1.7.1 Cloud Based Hosting Services;
- 1.7.2 Email Marketing Tools;
- 1.7.3 Payroll Systems;
- 1.7.4 Document Storage;

- 1.7.5 Document Destruction;
- 1.7.6 Helpdesk Support System;
- 1.7.7 Survey Tool; and
- 1.7.8 Analytics Tool

A list of sub-processors is available at <https://www.geometricresults.co.uk/gdpr>

- 1.8 The Client hereby gives specific written authorisation for the Supplier to sub-contract processing of the Personal Data to the sub-processors set out in clause 1.7 above. The Supplier shall not engage a sub-processor, other than those set out in clause 1.7 above, without prior written authorisation of the Client.
- 1.9 The Supplier shall ensure that personal data, as defined under the GDPR, is not transferred to a country or territory outside the European Economic Area and that no other data is transferred to a country or territory outside the European Economic Area without the prior approval of the Client.
- 1.10 The Supplier will employ appropriate operational and technological processes and procedures to keep the personal data safe from personal data breach. Such as: unauthorised use, access or disclosure, loss, accidental or unlawful destruction, alteration or theft. These include adopting security measures including encryption, pseudonymisation, resilience of processing systems and backing up personal data in order to be able to reinstate the system. The Supplier will not keep personal data on any laptop or removable drive or device unless that device is protected by being fully encrypted, and by deploying and maintaining an up to date Antivirus package, and the use of the device or laptop is necessary for the provision of the services under this Agreement. Where this is necessary, the supplier will keep an audit trail of which laptops/devices the personal data are held on.
- 1.11 The Supplier shall ensure that measures are in place to do everything reasonable to: make accidental compromise or damage unlikely during storage, handling, use, processing, transmission or transport; deter deliberate compromise or opportunist attack, and; promote discretion in order to avoid unauthorised access. The Supplier undertakes that personal data will not only be distributed through email if it is password protected and encrypted or sent via a secured email facility.
- 1.12 In addition to the Client's obligations in regarding having appropriate technical and organisational measures to protect personal data, the Client must enable data subjects to exercise their rights, such as subject access requests and requests for the rectification or erasure of personal data, and making objections to processing. The Supplier therefore undertakes that it will assist the Client in meeting these obligations to data subjects, including under chapter III of the GDPR. The supplier also undertakes to:
 - 1.12.1 notify the Client of any personal data breaches within 24 (twenty four) hours of the breach occurring; and assist the Client to advise data subjects when there has been a personal data breach.
- 1.13 Each party shall comply with the Data Protection Laws applicable to it in connection with this Agreement, and shall not cause the other party to breach any of its obligations under Data Protection Laws.
- 1.14 Each party will, on request by the other party, provide any information necessary for each party to comply with Article 30 of GDPR, to the extent not already known to such party.
- 1.15 Each party will promptly on demand provide to the other Client information which such party may reasonably require to make the assessments as to the appropriateness of the technical and organisational security measures required by Article 32 of GDPR.
- 1.16 Each party will provide to the other Client reasonable cooperation and assistance in responding to any enquiry in relation to such Personal Data which either party may receive from the Information Commissioner's Office or any other supervisory authority (as defined in the GDPR) of competent jurisdiction.

- 1.17 Where a data subject exercises his or her rights in respect of his or her Personal Data, and the Client instructs the Supplier to cease or modify its processing of that Personal Data as a result, the Client acknowledges and agrees that such modification or cessation may result in the Supplier not being able to provide, or being required to suspend provision of, its Services in respect of that data subject.
- 1.18 The Supplier shall provide reasonable assistance to the Client enabling it to carry out data protection impact assessments, where required (**DPIA**); and in this situation, to assist the Client to consult with the Information Commissioner where the DPIA indicates there is an unmitigated high risk to the processing.
- 1.19 The Supplier shall comply with and contribute to audits and inspections by the Client or its appointees.
- 1.20 The parties may each need to appoint a mandatory Data Protection Officer in keeping with the GDPR and each party shall inform the other party of such appointment, or any changes to the appointment of its Data Protection Officer.
- 1.21 The Supplier shall keep records of all processing activities.
- 1.22 The Client:
- 1.22.1 hereby instructs the Supplier to process such Personal Data as reasonably necessary to perform the Services; and
 - 1.22.2 will ensure that it has a valid legal basis for the processing of such Personal Data so that the Supplier may lawfully process the Personal Data in accordance with this Agreement on the Client's behalf.

2 **Indemnities**

Each party shall indemnify the other (and the supplier will indemnify for the sub-processors) against all costs, expense (including legal expense), damages, loss (including business or loss of profits), liabilities, demands, claims, actions or proceedings which a party may incur arising out of any breach of this Agreement howsoever arising for which the other party is proven to be liable of.

3 **Declaration**

The parties agree to abide by the terms and conditions of this DPA. In doing so, both parties are aware of and understand the relevant provisions of the General Data Protection Regulations 2016 and associated UK law, and agree to abide by these provisions.

Schedule 6

HealthForce App Platform Fee

Newcross shall charge a fee of [to be confirmed] (the 'Platform Fee') to the Client for the use of the HealthForce App.

The terms for payment of the Platform Fee will be as follows:

- [to be confirmed]

Signed by [Name of Authorised Signatory]
for and on behalf of
NEWCROSS HEALTHCARE SOLUTIONS LIMITED

.....
Director

Signed by [Name of Authorised Signatory]
for and on behalf of
[CLIENT]

.....
Director