

Framework Agreement

for the supply of medical locums of all grades and specialties (excluding locum GPs) to all NHS bodies (whether acting individually or on behalf of or together as members of any consortium) within England, Scotland and Wales and any other named organisations within the United Kingdom ("Participating Authorities") that may choose to participate at their own discretion

This Framework Agreement is made the [insert the day that the NHS Purchasing and Supply Agency sign] day of [insert the month and year that the NHS Purchasing and Supply Agency sign]

Between:-

- (1) The NHS Purchasing and Supply Agency ("the NHS PASA") whose principal office is at Premier House, 60 Caversham Road, Reading RG1 7EB, acting as agent for itself and all NHS bodies within England, Scotland and Wales and any other named organisations within the United Kingdom ("Participating Authorities") that may choose to participate at their own discretion; and
- (2) [insert name of the Supplier] whose company registered office is at [insert address of Supplier] ("the Supplier").

Whereas

- (A) An advertisement was placed by the NHS PASA in the British Medical Journal, Health Service Journal, Hospital Doctor, Recruiter Magazine and on its website on or before 11 July 2007 in respect of a national framework agreement for the provision of medical locums of all grades and specialties (excluding locum GPs) to all NHS bodies (whether acting individually or on behalf of or together as members of any consortium) within England, Scotland and Wales and any other named organisations within the United Kingdom ("Participating Authorities") that may choose to participate (as defined below) and from the expressions of interest received, it subsequently short listed a number of potential suppliers (including the Supplier) to participate in a competitive tender;
- (B) On [insert date] the NHS PASA invited the short listed suppliers (including the Supplier) to submit offers in respect of the procurement subject to the terms of the various documents comprising or included with the Invitation to Offer; and
- (C) On the basis of its offer, the NHS PASA has selected the Supplier (and may have appointed other suppliers) to provide medical locums of all grades and specialties (excluding locum GPs) (as specified below) to all NHS bodies with England, Scotland and Wales and other Participating Authorities (as defined below and including itself) in the manner and on the terms described herein.

Now it is hereby agreed as follows:

1. Definitions

- 1.1 In this Framework Agreement the following words and phrases shall have the following meanings:

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- 1.1.1. **“Agency Worker”** means any registered medical practitioner (as defined in the Interpretation Act 1978) who complies with the requirements of the NHS Terms and Conditions of Contract and is supplied by the Supplier as a temporary worker as part of the provision of the Services, whether that person is employed or engaged by the Supplier;
- 1.1.2. **“Associated Company”** means any company which has also been appointed to supply the Services under the Framework Agreement and which, in relation to the Supplier, is:
- (a) a company controlled by the Supplier;
 - (b) a company which controls the Supplier; or
 - (c) a company controlled by any company which controls the Supplier.
- 1.1.3. **“Authority”** means any of the Participating Authorities listed in Appendix One, which has entered into a Supply Contract with the Supplier pursuant to the provisions of the Framework Agreement;
- 1.1.4. **“Confidential Reference”** means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Supply Contract and:
- (i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998) or (in the case of the Authority) which relates to any patient or his or her treatment or medical history; or
 - (ii) the release of which is likely to prejudice the commercial interests of the Authority or (as the case may be) the Supplier; or
 - (iii) which is a trade secret.
- 1.1.5. **“Contract Price”** means the hourly charge rate payable by the Authority to the Supplier for the provision of the Services as calculated in accordance with the NHS Terms and Conditions of Contract on the basis of the Supplier’s Offer and as listed in Appendix Two;
- 1.1.6. **“Invitation to Offer”** means the invitation to offer issued by the NHS PASA as referred to in Recital (B);
- 1.1.7. **“Mini-Competition”** means the reopening of competition between the Suppliers appointed to this Framework Agreement;
- 1.1.8. **“NHS bodies”** means all or any of:
- (a) the Department of Health and all agencies and special health authorities thereof (including the NHS PASA);
 - (b) health service bodies referred to in Section 9 of the National Health Service Act 2006;
 - (c) any care trust as defined in Section 77 of the National Health Service Act 2006;

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- (d) any NHS Foundation Trust listed in the register of NHS foundation trusts maintained pursuant to Section 39 of the National Health Service Act 2006;
- (e) the Secretary of State for Health;
- (f) any body replacing or providing similar or equivalent services to the above; and
- (g) any statutory successor to any of the above

and NHS bodies shall be construed accordingly

- 1.1.9. **“NHS Terms and Conditions of Contract”** means the NHS Terms and Conditions of Contract (Document no. 4) included within the Invitation to Offer;
- 1.1.10. **“Offer”** means all the terms of the Offer submitted by the Supplier as referred to in Recital (C);
- 1.1.11. **“Participating Authorities”** means all or any of the bodies listed in Appendix One and any successor to any such body, together with all other NHS trusts, NHS Foundation Trusts and Primary Care Trusts;
- 1.1.12. **“Permitted Content”** has the same meaning as in paragraph 1.4 of Schedule 6 (Service Level Agreement Requirements) of the NHS Terms and Conditions of Contract;
- 1.1.13. **“Personal Data”** means data as defined by the Data Protection Act 1998 which relates to a living individual who can be identified from such data, and/or from such data and other information which is in the possession of, or is likely to come into the possession of the Supplier and includes any expression of opinion about an individual and any indication of the intentions of the Supplier in respect of an individual;
- 1.1.14. **“Services”** means the services provided by the Supplier pursuant to and in accordance with, the NHS Terms and Conditions of Contract, the Supply Contract and Special Terms (if any);
- 1.1.15. **“SLA”** means a Supply Contract that is in writing with the Supplier and may contain Special Terms (if any);
- 1.1.16. **“Special Terms”** means such terms relating only to the Permitted Content or otherwise as may be agreed in writing between the Authority and the Supplier relating to the provision of the Services and included within the SLA
- 1.1.17. **“Supply Contract”** means an agreement (verbal or in writing) entered into between the Authority and the Supplier in accordance with the NHS Terms and Conditions of Contract.

- 1.2. References in this Framework Agreement to legislation include all amendments, replacements or enactments made to that legislation.
- 1.3. References to legislation include all regulations, statutory guidance or directions made in respect of it.
- 1.4. Headings are for ease of reference only and are not to affect interpretation.

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- 1.5. References to Clauses, unless otherwise specified, are to Clauses in this Framework Agreement.
- 1.6. All documents including all appendices, annexes and schedules referred to in this Framework Agreement form part of it.
- 1.7. Words importing the masculine gender only shall include the feminine gender and words importing the singular shall include the plural and vice versa.
- 1.8. The NHS PASA shall be entitled under this Framework Agreement to vary, amend or enforce the terms of the Framework Agreement and the NHS Terms and Conditions of Contract.
- 1.9. In addition the NHS PASA shall be entitled as agent for any Participating Authority to vary, amend or enforce the Supply Contract or Special Terms (if any) as may be required from time to time.
- 1.10. The Supplier acknowledges and agrees that all NHS bodies within England, Scotland and Wales and other Participating Authorities are permitted to negotiate SLAs only within the parameters of the Permitted Content. Any terms and conditions purported to be agreed between an Authority and the Supplier outside the parameters of the Permitted Content shall be null and void, shall have no effect and in particular shall not constitute the Special Terms (if any).

2. Duration

- 2.1 This Framework Agreement shall commence on 01 July 2008 and shall continue in force until 30 June 2011 unless the NHS PASA no later than 3 months prior to 30 June 2011 exercises by notice in writing to the Supplier its option to extend the Framework Agreement by up to 12 months to 30 June 2012 (inclusive). Such extension shall apply to all of the Services or to such Services as the NHS PASA may specify in the notice given under this Clause 2.1.

3. Termination

- 3.1 The NHS PASA may terminate this Framework Agreement by giving not less than 3 months notice in writing to the Supplier at any time. For the avoidance of doubt the NHS PASA shall not be under any obligation to terminate at the same time the participation of other suppliers that may have been awarded the right to participate in a framework agreement as a result of the procurement process subject of the Invitation to Offer.
- 3.2 The NHS PASA may at any time by notice in writing terminate this Framework Agreement as from the date of service of such notice if the Supplier is in material breach of any obligation under this Framework Agreement or under a Supply Contract and
 - 3.1.1. the material breach is capable of remedy and the Supplier shall have failed to remedy the material breach within 30 days of written notice to the Supplier specifying the material breach and requiring its remedy; or
 - 3.1.2. the material breach is not capable of remedy in which case termination shall be immediate.
- 3.3 The NHS PASA may at any time by notice in writing terminate this Framework Agreement forthwith if any Supply Contract is terminated by an NHS body within England, Scotland and Wales or other Participating Authority due to the Supplier's breach of that Supply Contract.

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3.4 Without prejudice to the provisions of Clause 3.2 and 3.3 above, if the Supplier is in material breach of any obligation under this Framework Agreement or under a Supply Contract, the NHS PASA may without terminating the whole of this Framework Agreement:

3.4.1 terminate it in respect of that part of which the Supplier is in breach; or

3.4.2 suspend it in respect of that part of which the Supplier is in breach

until such time as the NHS PASA is satisfied that the Supplier shall be able to perform that part of this Framework Agreement in accordance with Supplier's contractual obligation under this Framework Agreement.

3.5 The NHS PASA may at any time in writing summarily terminate this Framework Agreement without compensation to the Supplier in any of the following events:

3.5.1 if the Supplier being an individual (or where the Supplier is a firm, any partner in that firm) shall at any time become bankrupt or shall have a receiving order, administration order, or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

3.5.2 if the Supplier is a company, the passing by the Supplier of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Supplier or the dissolution of the Supplier, or if an administrator is appointed in respect of the Supplier, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Supplier's assets, or if the Supplier makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and

3.5.3 any event in any jurisdiction other than England, Scotland and Wales which is analogous to any of the above.

3.6 Termination in accordance with this Clause 3 (Termination) shall not prejudice or affect any right of action or remedy which shall have accrued at the Termination Date or shall thereafter accrue to either party.

3.7 The rights contained in this Clause 3 (Termination) are without prejudice to any other rights contained in this Framework Agreement.

3.8 Any provisions of this Framework Agreement intended by their nature to survive termination shall so survive termination of this Framework Agreement.

4 Obligations of the Supplier

4.1 In consideration of (a) the NHS PASA agreeing to appoint the Supplier to this Framework Agreement and (b) the NHS PASA agreeing to pay £5 (five pounds) to the Supplier on demand (such payment being refundable to the NHS PASA on the Supplier entering into any Supply Contract for the supply of medical locum of all grades and specialties (excluding locum GPs)

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from any NHS body within England, Scotland and Wales or other Participating Authority pursuant to this Framework Agreement) the Supplier undertakes to supply medical locums of all grades and specialties (excluding locum GPs) of the exact quality, type and price specified in Appendix Two (subject only to any variation arising as a result of the running of a Mini-Competition) and in accordance with the terms of the Offer in such quantities, to such extent and at such times and locations as may be requested by any NHS body within England, Scotland and Wales and other Participating Authority or as the case may be its duly authorised agent, in accordance with the NHS Terms and Conditions of Contract. In the event of any inconsistency between the terms of the Offer and the terms of Appendix Two, the latter shall prevail.

- 4.2 In further consideration of the NHS PASA agreeing to appoint the Supplier to this Framework Agreement, the Supplier further undertakes to notify the NHS PASA in writing in the event that, at any time during the term of this Framework Agreement, it becomes able to supply other grades and specialties of medical locums of the exact quality, type and price (subject only to variation arising as a result of the running of a Mini-Competition) specified in the Supplier's Offer. Upon receipt of such notification, the NHS PASA will, as soon as reasonably practicable, review the addition of such grades and specialties to the Supplier's appointment to the Framework Agreement and will notify the Supplier in writing as to whether the addition of such grades and specialties is approved. Where any additional grades and/or specialties of Agency Workers are approved by the NHS PASA, Appendix Two shall be amended by the addition of such grades and/or specialties in accordance with the provision of Clause 14.3 below.
- 4.3 In the event of any inconsistency between the terms of the Offer and the terms of Appendix Two at any time, the latter shall prevail.
- 4.4 The Supplier will accept all and any requests for medical locums of all grades and specialties (excluding locum GPs) pursuant to this Framework Agreement from any NHS body within England, Scotland and Wales and other Participating Authorities, as being pursuant to this Framework Agreement.

For the avoidance of doubt, where the Supplier provides the same Services pursuant to this Framework Agreement to any NHS body within England, Scotland or Wales and other Participating Authority and not in accordance with its contractual obligations under this Framework Agreement, then the Supplier shall be in breach of its contractual obligations under this Framework Agreement.

- 4.5 The Supplier agrees that at all times:
 - 4.5.1 the NHS Terms and Conditions of Contract shall apply to all supplies of medical locums (excluding locum GPs) made by the Supplier to NHS bodies within England, Scotland and Wales and other Participating Authorities pursuant to this Framework Agreement; and
 - 4.5.2 it will not in its dealings with NHS bodies within England, Scotland and Wales and other Participating Authorities seek to impose or rely on any contractual terms which in any way vary or contradict the NHS Terms and Conditions of Contract, save for any Special Terms (if any) agreed in writing between the Supplier and the NHS body within England, Scotland and Wales or other Participating Authority concerned and contained within the Permitted Content of an SLA.
- 4.6 If two or more NHS bodies or other Participating Authorities enter into a Supply Contract with the Supplier as a Consortium, they must notify the Supplier in writing of such intention. The Supplier with effect from the date on which the Consortium sends the written confirmation

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signed on behalf of all the parties that are members of the Consortium, shall treat the NHS bodies and other Participating Authorities concerned as one entity. Save for the Parties shall be held severally, and not jointly liable, under the Supply Contract, in particular any failure to comply with the NHS Terms and Conditions of Contract and/or Special Terms (if any) once the SLA is agreed and executed by the Parties concerned.

- 4.7 The Supplier shall ensure that it insures against its liability in respect of its provision of the Services under the Framework Agreement and maintains such insurance during the continuance of this Framework Agreement. The Supplier shall ensure that its insurance company/ies are notified of the Suppliers obligations under the Framework Agreement and obtain from their insurer(s) an undertaking to notify the NHS PASA at the address set out above the moment any issues or problems arise with respect to the Supplier's insurance relating to the provision of the Services under this Framework Agreement.
- 4.8 The Supplier shall ensure that during the continuance of this Framework Agreement it maintains its adherence to the Code of Practice for the international recruitment of healthcare workers, Department of Health, December 2004 and Safer Recruitment – a guide for NHS employers, Department of Health, as amended, supplemented or replaced during the term of the Framework Agreement.

5 **Price**

- 5.1 The Supplier acknowledges and agrees that the NHS PASA has entered into this Framework Agreement on behalf of all NHS bodies within England, Scotland and Wales and other Participating Authorities on the basis of the Contract Price information supplied to and accepted by the NHS PASA as specified in Appendix Two. The Supplier shall not offer medical locums subject of this Framework Agreement to NHS bodies within England, Scotland and Wales and other Participating Authorities at a lower price than has been accepted by the NHS PASA as specified by the Supplier in Appendix Two (unless by way of a Mini-Competition conducted) and:
- (a) such lower price is not derived via a Mini-Competition, from terms which were capable of being fixed and determined at the time of, or before, the Framework Agreement was concluded; and
 - (b) the resulting price from a Mini-Competition supplements – as an increase or decrease – the price within the concluded Framework Agreement
- 5.2 If the Supplier offers medical locums subject to this Framework Agreement to an NHS body within England, Scotland and Wales and/or other Participating Authority at a lower Contract Price than that specified in Appendix Two, in breach of Clause 5.1 above, this breach shall be deemed to be a material breach of this Framework Agreement as defined in the NHS Terms and Conditions of Contract, and shall entitle the NHS PASA to terminate this Framework Agreement in accordance with the NHS Terms and Conditions of Contract. The Supplier agrees and acknowledges that the NHS PASA is entitled to recover any costs the NHS PASA or any NHS bodies within England, Scotland and Wales and/or other Participating Authorities may incur in consequence of the NHS PASA terminating this Framework Agreement pursuant to this Clause 5.2.
- 5.3 The right to terminate this Framework Agreement given by Clause 5.2. above shall be without prejudice to any other right or remedy of the NHS PASA in respect of the breach concerned or any other breach.

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- 5.4 The NHS PASA may, at its sole discretion, decide to accept the Supplier's breach of Clause 5.1. above and instead of terminating this Framework Agreement, the NHS PASA shall substitute the lower price offered by the Supplier in breach of Clause 5.1 above for the original price specified in Appendix Two.
- 5.5 Any waiver by the NHS PASA of Clause 5.2. above, pursuant to Clause 5.4 above, shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Framework Agreement.

6 Mini-Competitions

- 6.1 Where not all of the terms of supply are laid down in this Framework Agreement, and such terms were not capable of being laid down at the time the Framework Agreement was concluded, one or more NHS body within England, Scotland or Wales or other Participating Authorities or the NHS PASA acting as agent for such NHS body/ies and/or other Participating Authority/ies may conduct a Mini-Competition in order to meet the specific requirements of a particular Supply Contract.
- 6.2 The NHS body/ies within England, Scotland and Wales or other Participating Authority/ies or the NHS PASA acting as agent for such NHS body/ies and/or other Participating Authority/ies are not obliged to invite all suppliers appointed under the Framework Agreement to participate in any Mini-Competition. Only those suppliers capable of fulfilling the particular requirements of the Supply Contract in question will be invited to participate in the Mini-Competition.

7 Ordering Procedures

- 7.1 Each NHS body within England, Scotland and Wales and other Participating Authority shall be entitled at any time during the term of the Framework Agreement to request medical locums of all grades and specialties (excluding locum GPs) from the Supplier and enter into Supply Contracts.
- 7.2 A Supply Contract shall come into existence when any NHS body within England, Scotland and Wales or other Participating Authority requests either verbally or in writing for the Supplier to provide a medical locum of the type agreed to be provided by the Supplier in its Offer and accepted by the NHS PASA.
- 7.3 An SLA shall come into existence when any NHS body within England, Scotland and Wales or other Participating Authority provides the Supplier with a Supply Contract which is in writing and may contain Special Terms (if any).
- 7.4 All activity leading up to the placing of a Supply Contract or SLA as the case may be (including but not limited to the production of any proposal, any discussions with the NHS body or other Participating Authority and the agreement of any Special Terms (if any)) shall be at the expense of the Supplier and shall not form part of the Contract Price.
- 7.5 In the event of and only to the extent of any conflict between a Supply Contract and the NHS Terms and Conditions of Contract, the NHS Terms and Conditions of Contract shall prevail over any Special Terms (if any).

8 The Position of NHS bodies within England, Scotland and Wales and other Participating Authorities within the United Kingdom

- 8.1 Other suppliers, in addition to the Supplier, may have been awarded the right to participate in a framework agreement as a result of the procurement process the subject of the Invitation to

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Offer. NHS bodies within England, Scotland and Wales and other Participating Authorities are at liberty to deal with their medical locum staffing requirements from internal banks or other intra-NHS body or national arrangements for the provision of medical locums. Accordingly the Supplier acknowledges that NHS bodies within England, Scotland and Wales and other Participating Authorities are under no obligation to place any, or any particular level of volume of, requests for medical locums or enter into any Supply Contract or SLA as the case may be with the Supplier under or pursuant to this Framework Agreement. The Supplier accepts that the NHS PASA shall have no liability to it in respect of or arising out of the volume of requests received by the Supplier or Supply Contracts or SLAs, as the case may be, entered into during the continuance of this Framework Agreement.

9 The Position of the NHS PASA

- 9.1 The NHS PASA has established this Framework Agreement as duly authorised agent for and on behalf of all NHS bodies within England, Scotland and Wales and other Participating Authorities. The Supply Contracts that are entered into, resulting from a request for a medical locum, will be between the Supplier and the NHS body/ies or other Participating Authority/ies concerned. The NHS PASA shall not be a party thereto nor shall the NHS PASA have any liability arising out of the acts or omissions of NHS bodies within England, Scotland and Wales and/or the other Participating Authorities in connection with such Supply Contracts.
- 9.2 The NHS PASA shall be entitled to amend the NHS Terms and Conditions of Contract from time to time and substitute a new version of the NHS Terms and Conditions of Contract at any time at its sole discretion and without the consent of the Supplier. The NHS PASA shall provide the Supplier with reasonable notice of the planned introduction of any new version of the NHS Terms and Conditions of Contract, such notice specifying the effective date of the amended NHS Terms and Conditions of Contract.
- 9.3 For the avoidance of doubt any such amendments to the NHS Terms and Conditions of Contract will be primarily related to events outside the direct control of the NHS PASA (for example, new legislation or government regulation) or which has evolved from practical use of the Services when, in the opinion of the NHS PASA amended NHS Terms and Conditions of Contract would serve to improve the overall operation of this Framework Agreement. In circumstances where the Supplier considers the amended NHS Terms and Conditions of Contract to be unacceptable, the issues shall be dealt with under the Dispute Resolution Procedure as referred to in Clause 18 (Dispute resolution Procedure) of this Framework Agreement.

10 Contract Marketing

- 10.1 Save as required by law and/or the requirements of any relevant stock exchange, no publicity shall be made by any of the Parties relating to any matter in connection with the Framework Agreement or any Supply Contract, without the prior written consent of the other Party.
- 10.2 The NHS PASA will publicly announce via its website that the Supplier has been awarded the Framework Agreement, together with the names of any other suppliers that have been awarded the right to participate in a framework agreement as a result of the procurement process subject of the Invitation to Offer.
- 10.3 The Supplier shall use its reasonable endeavours to market the Services to all NHS bodies within England, Scotland and Wales and other Participating Authorities within the United Kingdom so as to ensure the possible maximum utilisation of the Services provided by the Supplier under this Framework Agreement.

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- 10.4 From time to time, the NHS PASA will advise the Supplier as to the acceptable types and means of publicity that the Supplier may use to market the Services to NHS bodies within England, Scotland and Wales and other Participating Authorities within the United Kingdom. For the avoidance of doubt the Supplier may not use the NHS PASA logo, any form of marketing/publicity that would misrepresent the situation, or may mislead or cause offence to an individual, group, NHS body, Participating Authority, company or other supplier.
- 10.5 Where the Supplier wishes to advertise/market the Services or use other publicity materials in addition to Clause 10.1 above, the Supplier will seek the written consent of the NHS PASA before its advertisement, press articles or other publicity materials are distributed and/or communicated to any NHS body within England, Scotland and Wales and other Participating Authorities within the United Kingdom and/or general public. The NHS PASA at its sole discretion may withhold such consent where in the NHS PASA's opinion the proposed advertisement, press article or publicity materials may misrepresent the situation or may mislead or cause offence to an individual, group, NHS body, Participating Authority, company or other supplier.
- 10.6 Where the Supplier advertises/markets or otherwise publicly announces the Services to any NHS body within England, Scotland and Wales and other Participating Authorities and/or general public without the prior consent of the NHS PASA in accordance with Clause 10.4 above, this action will be a breach of the Supplier's obligations under this Framework Agreement.
- 10.7 If after a period 6 months or more from the commencement date or throughout the continuance of this Framework Agreement, the Supplier fails to enter into any Supply Contracts for the provision of the Services with any NHS body within England, Scotland and Wales and/or other Participating Authority, then the Framework Agreement with the Supplier shall be immediately reviewed by the NHS PASA.
- 10.7.1 Subject to the outcome of any agreed remedial action to be taken by the Supplier and any subsequent provision of the Services by the Supplier to an NHS body within England, Scotland and Wales and/or other Participating Authority under a Supply Contract during the 3 months immediately following the date of review, this Framework Agreement shall be terminated.

11 Contract Monitoring

- 11.1 The NHS PASA may at any time require the Supplier to attend at any of the NHS PASA's offices or at any otherwise notified location, Contract Performance Review Meetings to enable the NHS PASA to monitor and assess the Supplier's performance of its obligations under this Framework Agreement and in connection with its compliance against the NHS Terms and Conditions of Contract and provision of the Services to NHS bodies within England, Scotland and Wales and other Participating Authorities under any Supply Contracts and/or SLAs as the case may be.
- 11.2 The Contract Performance Review Meeting shall be attended by such duly authorised representatives of the Supplier as the NHS PASA may reasonably stipulate.
- 11.3 Without prejudice to this Clause 11 (Contract Monitoring), the NHS PASA shall be entitled at any time on reasonable notice to inspect the premises, books and records of the Supplier for the purpose of assessing the Supplier's compliance with its contractual obligations under the Framework Agreement, NHS Terms and Conditions of Contract and performance of the Services under any Supply Contract and Special Terms (if any).

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- 11.4 In respect of each calendar month up to and including the final calendar month during the continuance of this Framework Agreement, the Supplier shall provide the NHS PASA with written details ("Sales Management Information") about the provision of the Services to NHS bodies within England, Scotland and Wales and other Participating Authorities in such form and format as the NHS PASA prescribes from time to time.
- 11.5 Where the Supplier fails to provide the NHS PASA with the Sales Management Information required in accordance with Clause 11.4 above, the Supplier will be in breach of its obligations under this Framework Agreement.
- 11.6 The Supplier shall keep at its normal place of business full and accurate accounts, personal records for the Agency Workers supplied or to be supplied in the provision of the Services under this Framework Agreement and records of all payments, receipts and related financial data relevant to the provision of the Services to all NHS bodies within England, Scotland and Wales and other Participating Authorities and such other full and accurate records as may be necessary to enable the Supplier to provide the NHS PASA with the information required under this Clause 11 (Contract Monitoring) or other provision of this Framework Agreement (all of which data and records are hereafter referred to as "Records").
- 11.7 The Supplier shall allow the NHS PASA at any time on reasonable notice to inspect and audit the Records. The Supplier shall provide all such assistance as may reasonably be required by the NHS PASA in the conduct of such inspection and audit including providing the explanations of the Records or copies of them.
- 11.8 Should any inspection or audit conducted under Clause 11.7 above reveal that any NHS body within England, Scotland and Wales or other Participating Authority has been overcharged for the Services provided to that body pursuant to this Framework Agreement or any Supply Contract, the Supplier shall within 7 days of receiving written notice of such discrepancy from the NHS body or other Participating Authority or from the NHS PASA acting as agent on its behalf, reimburse the said NHS body or other Participating Authority such amount as has been calculated to have been overcharged. In the event that the calculated amount of the discrepancy exceeds 4 percent of the amount that should have been charged to the NHS body or other Participating Authority, the Supplier shall reimburse the NHS body or other Participating Authority or the NHS PASA acting as agent on its behalf, with the costs they have incurred in performing the inspection and audit. Such costs shall be determined solely by the NHS body or other Participating Authority or the NHS PASA acting as agent on its behalf, who shall inform the Supplier of the costs thus incurred at the same time as the NHS body or other Participating Authority or the NHS PASA acting as agent on its behalf informs the Supplier of the discrepancy. The Supplier may engage an independent auditor (at the Supplier's own expense) to audit the discrepancy and records.
- 11.9 Without prejudice to any other provision of this Clause 11 (Contract Monitoring) the Supplier shall promptly provide the NHS PASA with such information and explanations as the NHS PASA may reasonably require concerning the operation of this Framework Agreement and any Services supplied under it at any time to NHS bodies within England, Scotland and Wales and/or other Participating Authorities. This may include without limitation:
- 11.9.1 copies of all statements given to NHS bodies within England, Scotland and Wales and/or other Participating Authorities within the United Kingdom that have been supplied with an Agency Worker detailing the relevant qualifications and experience of the Agency Worker concerned;
 - 11.9.2 the provision of the names and addresses of all NHS bodies within England, Scotland and Wales and/or other Participating Authorities to which Agency Workers

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have been supplied; the name of the Agency Worker supplied in each case; the identity of the ward or department of the NHS bodies within England, Scotland and Wales and/or other Participating Authorities to which the Agency Worker was supplied and the dates between which they were supplied.

- 11.10 If paragraphs 1.5 and 5.4 of Schedule 2 (Staff and Agency Workers) to the NHS Terms and Conditions of Contract apply in respect of any Agency Worker supplied to any NHS body within England, Scotland and Wales and/or other Participating Authorities, the Supplier shall:

11.10.1 promptly inform the NHS PASA of that fact by way of a Confidential Reference;

11.10.2 fully investigate the circumstances surrounding all such reports of poor performance and communicate by way of a Confidential Reference details of the outcome of any such investigation to the NHS PASA; and

11.10.3 not supply that Agency Worker to any NHS body within England, Scotland and Wales and/or other Participating Authorities until the NHS PASA is satisfied that the problems have been resolved and will not recur.

- 11.11 Any Agent (as defined in the NHS Terms and Conditions of Contract) of the Authority or any other person or organisation as the NHS PASA may from time to time approve, may operate an electronic database of Agency Workers whom the NHS PASA adjudges should be suspended from supply as Agency Workers under this Framework Agreement (whether following receipt of information supplied in accordance with Clause 11.10 above, or following poor reports of an Agency Worker's performance received from another supplier of services to NHS bodies within England, Scotland and Wales and/or other Participating Authorities in the nature of the Services or otherwise). The Supplier:

11.11.1 shall search the said database at least once per calendar month and also on every occasion prior to supplying a newly recruited person for the first time as an Agency Worker under this Framework Agreement or under any Supply Contract;

11.11.2 shall apply to the NHS PASA for a Confidential Reference regarding any person whose name appears on the database who is or who is intended to be supplied as an Agency Worker to any of the NHS bodies within England, Scotland and Wales and/or other Participating Authorities;

11.11.3 shall not supply any person named on the said database to any NHS body within England, Scotland and Wales and/or other Participating Authorities until the NHS PASA is satisfied that the problems have been resolved and will not recur; and

11.11.4 undertakes to access and use the said database only for the proper purposes as set out in this Clause 11 (Contract Monitoring) and in accordance with such conditions of access and use (including security obligations) as may be specified in writing by the NHS PASA from time to time.

- 11.12 The Supplier shall:

11.12.1 treat all Confidential References (including Confidential References sent by any NHS bodies within England, Scotland and Wales and/or other Participating Authorities the Supplier) as confidential and shall not disclose any Confidential Reference to any third party (including for the avoidance of doubt the person the subject of a Confidential Reference) without the prior written consent of the body on whose behalf the Confidential Reference was given;

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- 11.12.2 clearly mark all Confidential References sent by the Supplier to the NHS PASA as being confidential and not to be disclosed to any third party without the prior written consent of the Supplier;
 - 11.12.3 use all Confidential References (including Confidential References sent by any NHS bodies within England, Scotland and Wales and/or other Participating Authorities) only for purposes directly connected with reporting the performance of Agency Workers;
 - 11.12.4 inform the NHS PASA if any information provided by the NHS PASA in a Confidential Reference is inaccurate or incomplete; and
 - 11.12.5 operate appropriate operational and technical security procedures to protect any Personal Data contained in the database referred to in Clause 11.11 above and in any Confidential Reference sent or received by the Supplier. The Supplier shall provide information as to the nature of its said procedure and/or evidence of compliance with such procedures to the NHS PASA on request.
- 11.13 The Supplier shall for the purposes of complying with the requirements of section 1(2) Part II of Schedule One of the Data Protection Act 1998 provide each Agency Worker with a data protection notice explaining the manner in which the Agency Worker's Personal Data will be used by the NHS PASA, by NHS bodies within England, Scotland and Wales and/or other Participating Authorities and by the Supplier for the purpose of reporting the Agency Worker's performance and the Supplier shall consult with the NHS PASA as to the appropriate content of such notice and the manner in which such notice is to be provided to Agency Workers.
- 11.14 The Supplier shall from time to time whenever requested by the NHS PASA provide such evidence as the NHS PASA may reasonably require that the Supplier is complying with its obligations under the Supply Contract with regard to each NHS body or other Participating Authority to whom the Supplier has provided the Services.
- 11.15 The Supplier undertakes that it has in operation as at the date hereof and will at all times throughout the term of this Framework Agreement maintain a system whereby it assigns to each Agency Worker and to each ward/department in each NHS body within England, Scotland and Wales and/or other Participating Authorities to which Agency Workers are supplied under this Framework Agreement or any Supply Contract, an individual serial number and that it will maintain cross referenced records showing which Agency Workers have worked in which wards/departments and during which times for each NHS body and/or other Participating Authority concerned.
- 11.16 The Supplier shall at all times co-operate with any investigation being undertaken by the NHS CFSMS (as defined in the NHS Terms and Conditions of Contract) and more particularly respond to any request for information in relation to the Supplier's compliance with this Framework Agreement, the NHS Terms and Conditions of Contract, Supply Contract and Special Terms (if any).

12 Assignment

- 12.1 This Framework Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of this Framework Agreement or any part of it, or the benefit, advantage or burden of this Framework Agreement or any part of it without the previous written consent of the NHS PASA.

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13 Pre-Contractual Statements

- 13.1 (Save in the case of fraud) no statements made by or on behalf of the NHS PASA at any time before, during or after the competition leading to conclusion of this Framework Agreement shall add to or vary this Framework Agreement or be of any force or effect unless any such pre-contractual statements are expressly set out in this Framework Agreement. The Supplier waives any right it may have to make any claim whatsoever in connection with any non-fraudulent pre-contractual statements made by or on behalf of the NHS PASA. This waiver shall be unconditional and irrevocable, but it is expressly agreed that it shall not exclude any liability of the NHS PASA for pre-contractual statements made fraudulently.
- 13.2 Without prejudice to the generality of Clause 13.1 above, the Supplier acknowledges that it has not been induced to enter into this Framework Agreement by any indication as to the volume or content of requests for medical locums (excluding locum GPs) which might be placed or Supply Contracts which might be entered into by NHS bodies within England, Scotland and Wales and other Participating Authorities at their own discretion.

14 General

- 14.1 The parties accept the non-exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed and construed in accordance with English law.
- 14.2 Any notice to be given pursuant to this Framework Agreement shall be in writing and shall be deemed duly served four days after it has been sent by pre-paid registered post to the address of the other party set out above or to such other address as may be notified by the recipient to the sender for the purposes of this Clause 14 (General).
- 14.3 No amendment of the Framework Agreement shall be valid unless in writing by a duly authorised representative of each of the parties.
- 14.4 The Supplier undertakes during the term of this Framework Agreement to immediately notify the NHS PASA of any change in name or corporate structure. The Supplier's failure to do so may result in the termination of this Framework Agreement.
- 14.5 If at any time during this Framework Agreement there is a change in control or ownership of the Supplier, the Supplier shall as soon as reasonably practicable thereafter inform the NHS PASA of the identity of the person acquiring such control or ownership by notice in writing to the NHS PASA.

15 Severability

- 15.1 If any provision of this Framework Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement the NHS PASA and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

16 Waiver

- 16.1 The failure of either party to insist upon strict performance of any provision of this Framework Agreement or the failure of either party to exercise any right or remedy to which it is entitled

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hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligation established by this Framework Agreement.

16.2 A waiver of any breach shall not constitute a waiver of any subsequent breach.

16.3 No waiver of any of the provisions of this Framework Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.

17 **Rights of Third Parties**

17.1 Except as otherwise set out in this Framework Agreement this Framework Agreement shall not create any rights that shall be enforceable by anyone other than the parties to this Framework Agreement.

18 **Dispute Resolution Procedure**

18.1 If any dispute arising out of this Framework Agreement cannot be resolved by a senior representative of the NHS PASA and a senior representative of the Supplier, then such dispute shall be referred to the Director at the NHS PASA and the Chief Executive at the Supplier.

18.2 If the NHS PASA's Director and the Supplier's Chief Executive cannot resolve the dispute within 10 days of referral then the parties will attempt to settle it by mediation in accordance with the CDER model mediation procedure. To initiate the mediation a party shall give notice in writing (the "ADR Notice") to the other party requesting mediation in accordance with this Clause. The Mediation shall take place not later than 28 days after the ADR Notice. There is an issue on the conduct of the mediation upon which the parties cannot agree within 14 days of the ADR Notice then CDER will at the request of any party decide the issue for the parties having consulted with them.

18.3 If a dispute is not resolved within 10 days of the commencement of the mediation then the parties may litigate the matter in accordance with Clause 14.1 above.

19 **Entire Agreement**

19.1 This Framework Agreement constitutes the entire understanding between the parties relating to the subject matter of this Framework Agreement, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

20 **Annexes and Electronic Schedules**

20.1 All of the documents and information provided by the Supplier in support of the Invitation to Offer, whether submitted in response to the Invitation to Offer with their form of offer or in response to a request for additional information or clarification by the NHS PASA, whether provided in hard copy or in electronic form, shall be included in and be legally binding and form part of this Framework Agreement.

21 **Collusion and The Competition Act 1998**

21.1 The Supplier will not collude with any other Supplier, agency, or organisation (other than an agency or organisation that is the Supplier's parent company, or part of the same group holding company or a Sub-Contractor (as defined in the NHS Terms and Conditions of Contract) approved by the NHS PASA) or discuss the terms and conditions of the Supplier's

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offer with the same, or the prices being submitted by the Supplier with the same, during the preparation of the Supplier's Offer, or prior to the award of the Framework Agreement, or during the currency of the Framework Agreement.

- 21.2 The Supplier agrees to comply with the declarations made under Document No.6 of the Invitation to Offer when submitting an Offer prior to the award of a Framework Agreement, and during the currency of the Framework Agreement.
- 21.3 The Supplier agrees to comply at all times with the requirements of the Competition Act 1998 and the Restrictive Trade Practices Act 1976.

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Appendix One

Participating Authorities

This framework agreement is for the benefit of all NHS bodies (whether acting individually, or on behalf of, or together as members of any consortia) within England, Scotland and Wales and the following other named organisations within the United Kingdom that may choose to participate at their own discretion:

- NHS bodies in Northern Ireland.
- The Department of Health, and its Arm's Length Bodies (ALBs) and agencies.
- Other UK Government Departments and their ALBs and agencies.
- Local Authorities and/or any other public bodies and their ALBs and agencies.
- Any bodies wholly or partly funded by Government departments or non-departmental public bodies charged with the delivery of healthcare or health related services.
- Any other non-NHS bodies which the participants deem necessary for the delivery of the services to NHS bodies, other public bodies or other Government Departments and their ALBs and agencies.

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Appendix Two

Details of Services and Prices [and Special Terms (if any)]

For information purposes only,

This Appendix shall list only those grades and prices of Agency Workers which the Supplier has been awarded to and confirmed can supply upon commencement of this Framework Agreement.

Additional grades and prices of Agency Workers may be added to the list above only where:

- the Supplier submitted a provisional bid for those grades of Agency Workers at the time of the procurement process but which the Supplier could not supply at the commencement of the Framework Agreement; and
- the Supplier has notified the NHS PASA that it is now able to supply those grades of Agency Workers at the provisional prices bid; and
- and the NHS PASA has approved the addition of those grades of Agency Workers to the Supplier's appointment to the Framework

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SIGNED by and on behalf of the parties on the date which first appears in this Framework Agreement

Duly authorised for and on behalf of the NHS PASA:-

Name:

Position:

Signature:

In the presence of:-

Name:

Position:

Signature:

Duly authorised for and on behalf of [insert Supplier name]:-

Name:

Position:

Signature:

In the presence of:-

Name:

Position:

Signature: