

**Registered with Care Commission**

**TERMS AND CONDITIONS**

The following definitions are used in this document:

<b>Agreement</b>	the agreement between Newcross and the Client set out in the signed agreement, the Scale of Charges and these Terms and Conditions as varied from time to time in accordance with these Terms and Conditions
<b>Client</b>	the institution to whom the Services are being provided by Newcross
<b>Fees</b>	the fee for the Services notified to the Client from time to time
<b>Scale of Charges</b>	the published scale of fees issued by Newcross from time to time
<b>Services</b>	the placement of work to be provided by Newcross to the Client in accordance with the Agreement
<b>Worker</b>	the nurse or care worker providing the service on behalf of Newcross

**1 Fees**

- 1.1 The Client agrees to pay to Newcross the Fees for the Service in consideration of Newcross making the Services available to the Client.
- 1.2 Fees will be charged by reference to time spent and time is charged in 15 minute units rounded up to the nearest whole unit.
- 1.3 The stated Fees will include all elements of the charge to be made including VAT (if applicable).
- 1.4 The Fees will be reviewed periodically (and in any event every 6 months in respect of qualified nurses and every 12 months in respect of care workers).
- 1.5 Where there is to be an increase or decrease in the Fees, there will be a notice period of four weeks before any change takes effect.

**2 Timesheets**

The Client or an authorised representative of the Client is responsible for verifying the hours worked by the Worker by signing a timesheet or by completing an online a timesheet.

### 3 **Invoicing**

Newcross will invoice the Client weekly in arrears. Any expenses incurred shall be itemised by Newcross in their invoice in addition to these fees, which are in force at the time of each assignment. Clients may at their option be submitted invoices 'online' through Newcross' online invoicing system.

### 4 **Payment**

Can be made either by BACS payment or by cheque.

### 5 **Interest**

If invoices are not paid by the due date agreed for payment Newcross reserves the right to charge interest accruing on a daily basis at 8% above the prevailing Bank of England base rate. In addition penalties as set out in the late payment of commercial debts (interest) Act 1998 will also be charged.

### 6 **Staffing**

Newcross accepts responsibility for meeting the agreed needs of the Client and will provide suitably trained, sufficiently skilled, experienced and competent staff to provide the Services.

### 7 **Permanent engagement of Nurses and Care Workers**

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 and in consequence Newcross reserves the right to raise charges where the placement of any of its workers leads to an engagement of that employee in permanent, temporary, full time or part time employment or engagement.

Any direct engagement by the Client of an Worker introduced to the Client by Newcross or the introduction by the Client of an Worker to another employer, agency or organisation similar to Newcross any of which events result in the engagement of such Worker by the Client or the third party ("the Engagement") shall render the Client liable to pay an introductory fee ("the Fee") to Newcross to compensate Newcross for the expense incurred in recruiting and placing the Worker on the following basis:

7.1 If the Engagement takes place during the Newcross employment the Fee shall be, for Nurses £3000 (excluding VAT) and Care Workers £2000 (excluding VAT)

7.2 If the engagement takes place after the Newcross employment has terminated the Fee shall be based on the following scale:

Period since Newcross employment ended	Fee (excluding VAT) (£)	
	Nurses	Care Workers
within 4 weeks	3,000	2,000
between 4 and 8 weeks	1,500	1,000
between 8 and 14 weeks	1,000	500

**PROVIDED THAT** there will be a discount on the Fee in respect of the number of weeks employment with Newcross completed by the Worker in the Engagement on the following scale:

Number of weeks completed employment	Discount
1 – 12	Nil
13 – 26	10%
27 – 52	25%
53 +	50%

**ALTERNATIVELY** the Client may at it's option enter into a further agreement with Newcross to engage the Worker (or Workers) on a full time basis (37.5 hours per week) for a fixed period of 6 months on terms similar to those contained within this contract in which circumstance the Fee shall not be payable.

## 8 Standard of care and liability

- 8.1 In the event that a Worker fails to attend the Client or if the Client is not satisfied with the standard of care provided the Client shall notify Newcross immediately in accordance with Newcross's written Complaints Procedure, which shall be available upon request.
- 8.2 Due to the nature of the service offered by Newcross to the Client, no liability by Newcross will be accepted for any loss, expenses, damage or delay arising from any failure to provide a Nurse or Care Assistant for all or part of the period of the booking.
- 8.3 Newcross will request and maintain the confidentiality of matters disclosed to Newcross by the client.

## 9 Cancellations

- 9.1 Newcross reserves the right to charge in full for any agreed assignment in accordance with the Fees agreed if the Client gives less than 24 (twenty four) hours notice of its cancellation of that assignment.

## 10 **Supervision**

- 10.1 The Client undertakes to provide a safe environment and safe and appropriate equipment for the task and to give appropriate guidance to the Worker during the period of the assignment with the Client so as to ensure the Client's own satisfaction with the standard of work and compliance with health and safety issues by the Worker including (but without limitation) the provisions of The Working Time Regulations 1998.
- 10.2 If the Client is not satisfied with the standard of work performed by the Worker then upon such notification (which must be confirmed in writing) Newcross will endeavour to replace the Worker for the Client. The Client will, however, be responsible for paying Newcross's charges in respect of the hours worked by the Worker concerned
- 10.3 The Client warrants that the Worker will have the benefit of its employers liability insurance and public liability insurance through the period of any engagement with the Client.

## 11 **Insurance**

Newcross has the following insurances in place:

- i) *Employers Liability Insurance* (at least £10 million in respect of any one claim);
- ii) *Public Liability Insurance including malpractice cover for treatment risks, errors and omissions* (at least £5 million in respect of any one claim);

## 12 **Liability**

Newcross accepts no liability, howsoever caused, on behalf of itself, or servants, agents or contractors for any losses, costs, damages, claims or expenses in connection with the dishonesty of any Worker.

## 13 **Meals, Refreshments and On-call duties**

Where the Services involve residence at the Client's premises the Client is required to provide adequate accommodation for rest or sleep and meals for the Worker. Adequate facilities for sleeping must be provided for workers on sleep-in duties. Refreshment breaks are not deductible from the charges nor is the cost of any meals or benefits in kind. Unless otherwise agreed, the Worker will be entitled to the same refreshment breaks, meals and facilities as the Client's own staff.

## 14 **Withdrawal**

Newcross reserves the right to withdraw Workers in circumstances, which, in Newcross's reasonable opinion, make the provision of its services untenable.

Such circumstances would include (but would not be limited to) failure by the Client to provide safe and appropriate equipment for the task to be undertaken or failure to pay or persistent late payment of Newcross's invoices.

## 15 **Sickness**

In the event of sickness, staff will call Newcross in the first instance and we will then endeavour to cover them with another staff member of equal grade from our bank of employees. Throughout this process, Newcross will communicate with the client updating them on the progress. In the event that no replacement can be found, the responsibility to cover the workplace will revert back to the client, with no liability attributed to Newcross.

## 16 **General**

16.1 The Agreement and these Terms and Conditions constitute all the terms and conditions between Newcross and the Client subject to the variations allowed for by those Terms and Conditions.

16.2 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

16.3 Newcross shall be entitled but not obliged at any time or times without notice to the Client to set off any liability of the Client to Newcross against any liability of Newcross to the Client (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated). Any exercise by Newcross of its rights under this clause shall be without prejudice to any other rights to remedies available to Newcross under this Agreement or otherwise.

All sums due under this Agreement shall be paid in full without any deduction or withholding (unless required by law) and the Client shall not be entitled to assert any credit set off or counterclaim against Newcross in order to justify any withholding of payment in whole or in part.

## 17. **Online Booking License**

17.1 Newcross has access to an automated online booking system ('the Montero System') which enables clients to access Newcross online, to ascertain staff availability and to place bookings. During the course of this agreement Newcross will allow the Client to utilise this software without charge.

17.2 The Montero System has further facility to enable Newcross to display on-line nurse verification details and to record profiles on staff engaged by Newcross ('the Profile Service'). During the course of this agreement Newcross will allow the Client to utilise this service without charge.

- IT
- 17.3 In order to enable the Client to utilise the Montero System and Profile Service Newcross will provide on-site set up and training at the Clients premises. Such service is subject to an on site audit of the Client's IT facilities and the Montero System and Profile Service can only be supplied where the Client's systems are compatible with the software.
- 17.4 Any subsequent training requested by the Client will be charged at the rate of £500 per day.
- 17.5 Upon acceptance of these terms Newcross grants to you a limited and non-exclusive license to use the Service for your own personal use. You may not grant access to the site to others through the use of your screen-name and password and such action shall entitle Newcross to terminate or suspend your access to the Service immediately. Such license will terminate upon the termination of this agreement.
- 17.6 To utilise the private Service member's will be required to create a screen-name and password. All screen-names and passwords remain the property of Newcross and no client shall gain a right to exclusive use or ownership of a screen-name or password. Newcross grants a limited non-exclusive license to the member to use the member's password and screen-name and such license shall terminate of this agreement.
- 17.7 Newcross shall use its best endeavours to ensure that the Montero System is accessible 24 hours per day however it shall not be liable for any interruption in service or the loss of any data howsoever caused.

## 18. Term

- 18.1 This agreement shall be for a three year period and shall then continue on a 2 yearly basis subject to termination by either party serving 6 months written notice upon the other.
- 18.2 Newcross shall be entitled to terminate this agreement if any of its invoices remain outstanding more than 14 days after the due date for payment.

## 19. Disputes

- 19.1 Any concerns arising from Newcross' performance under this agreement shall be raised in writing to Newcross and Newcross shall endeavor to answer such concern to the satisfaction of the Client within 14 days of receipt.
- 19.2 Where such dispute cannot be resolved or where a dispute arises between the parties such dispute shall be referred mediation under the auspices of the ADR Group by either party giving written notice to the other requesting mediation in accordance with this clause.
- 19.3 The mediator shall be appointed within 14 days of the date of the notice, failing which the mediator shall be appointed by the President of the Law Society of England and Wales.

- 19.4 The parties shall agree upon the conduct of the mediation and in default of agreement ADR and the mediator (if he has been appointed) shall consult with the parties and determine the issue.
- 19.5 The parties agree in good faith to seek to resolve the issues through the mediation process.
- 19.6 If the dispute is not resolved within 60 days of the notice the dispute may be referred to the English Courts for determination.
- 19.7 Nothing in this clause shall restrict Newcross from pursuing its outstanding invoices through the English Courts nor restrict either party from seeking injunctory relief.