

The Care Quality Commission ('CQC') Specialist Advisor Terms of Engagement (Part II)

These terms govern your engagement from time to time by CQC as a SpA. This is **not** an employment contract and does not confer employee status on you. It does not create any obligation on CQC to offer or provide work to you. Equally, it does not oblige you to undertake work if it is offered to you by CQC. By entering into this Agreement you confirm your understanding and intention that there will at no time be any mutuality of obligation between the parties.

1. Duration

- 1.1. This Agreement shall commence on **DATE** and shall continue until it terminates on **DATE** without the need for notice subject to the provisions in clause 14.

2. Arrangement for Services

- 2.1. The CQC may, entirely at its own discretion, contact you directly to offer you work as a SpA (an "Assignment"). As stated above, CQC is under no obligation to offer you an Assignment and you are under no obligation to accept an Assignment that is offered to you. However, if you do accept an Assignment, you must inform CQC immediately if you will be unable to complete it for any reason.
- 2.2. The nature of the services that you will be required to provide on an Assignment will be outlined by CQC in advance of you undertaking that Assignment. The title SpA does not limit the scope of the activities that you may agree to undertake on behalf of the CQC.
- 2.3. The fact that CQC may have previously offered you an Assignment, or it offers you an Assignment on more than one occasion, shall not be regarded as giving rise to an entitlement to be provided with regular work.
- 2.4. If you are offered and you accept an Assignment, you will provide the relevant services where and when reasonably required by CQC. Whilst undertaking an Assignment, you will accept all reasonable directions from CQC.
- 2.5. There are no normal hours for activity attaching to this role. You will be informed of an estimate of the required hours for each Assignment when it is offered to you. You should ensure that you take adequate rest breaks, in accordance with the Working Time Regulations 1998, when undertaking an Assignment.
- 2.6. In recognition of the fact that CQC is not obliged to offer you a minimum number of Assignments, nothing in this Agreement shall prevent you from providing services to other organisations or pursuing other professional interests in-between Assignments (provided that such activity does not cause a breach of any of your obligations under this Agreement).

3. Place of Activity

- 3.1. Your usual place of activity is shown in Part I of this statement. CQC may offer you Assignments at various locations. You will be informed of the relevant location when an Assignment is offered to you.

4. Fees

- 4.1. On the 19th of each month you will be paid a fee for the authorised services that you have provided to CQC in the preceding calendar month. Payment is conditional on you evidencing the services that you have provided by submitting your timesheet and expenses claim along with relevant receipts.
- 4.2. The fee rate which applies as at the date of this Agreement is set out in Part I of this Agreement. CQC reserves the right to vary, in its absolute discretion, the fee rates that it offers you from time to time. When you are offered an Assignment you will be notified of any changes to the applicable fee rate.
- 4.3. CQC will make all necessary deductions from your fees as required by law and shall be entitled to deduct from your pay or other payments due to you any money which you may owe to CQC at any time.
- 4.4. CQC will pay any sums due to you by direct transfer to your bank or building society account. You are responsible for providing correct bank or building society account details to CQC.
- 4.5. CQC will only pay you directly for services provided; you are not able to invoice CQC through a 3rd party or limited company.
- 4.6. Payment for time spent travelling to and from an inspection and any preparation time prior to inspection is included in the day rate you receive for attendance at an inspection.

5. Expenses

- 5.1. You are entitled to claim expenses as outlined by the Specialist Advisor & Bank Inspector general expenses, travel and subsistence policy and procedures (for the avoidance of doubt these policies and procedures are not incorporated into this Agreement).

6. Holiday

- 6.1. CQC recognises that SpAs engaged on an Assignment will accrue an entitlement to statutory paid holiday. Your entitlement will be calculated on a pro rata basis according to the time you actually spend providing services to CQC in respect of an individual Assignment. It is acknowledged that due to the nature of the Assignment activity it will not, in general circumstances, be appropriate for holiday to be taken during the period of an Assignment. At the end of each Assignment you will therefore be paid in lieu of any accrued but untaken holiday entitlement. This will be paid to you on a monthly basis in arrears. The payment will be calculated at a rate of 12.07% of the fees received for the total number of days worked (less any applicable deductions).

7. **Sickness or injury**

- 7.1. In the event of sickness or injury when you have agreed to undertake activity for CQC, you must inform the Scheduling Team as soon as possible and aim to give a minimum of 2 weeks' notice where possible. For the avoidance of doubt, no fee will be paid to you in respect of any period during which you are not providing services to CQC and you are not entitled to receive sick pay.

8. **Personal details**

- 8.1. You are required to provide CQC with your name, address, telephone/mobile number, bank details and other relevant personal details and inform the Flexible Workforce Office of any subsequent changes.
- 8.2. CQC will process (including holding and sharing) your personal information or data for purposes connected with your employment and as permitted by the General Data Protection Regulation (GDPR). The information may have been provided by you or acquired by the CQC in the course of your employment application and/or subsequent employment, and includes special category personal data, such as medical information that you have provided. The processing of these details by CQC (and by third parties as detailed in 8.3 below) is necessary for the performance of this contract.
- 8.3. These personal details will be shared with a third party agent working on behalf of CQC for the purpose of managing travel and accommodation bookings. For further information on how CQC manages your personal data please visit <http://www.cqc.org.uk/about-us/our-policies/privacy-statement>

9. **Policies and Procedures**

- 9.1. Whilst undertaking an Assignment, you are required to provide the relevant services with all due care, skill and ability.
- 9.2. You must comply at all times with all relevant CQC policies and procedures and the required values and behaviours and you must make yourself familiar with these. In particular, your attention is drawn to the following policies and procedures:
- Alcohol and drug misuse
 - Bullying and harassment
 - Code of conduct
 - Code of practice on confidential personal information
 - Counter fraud policy
 - Declaration of interest and resolution of conflicts
 - Equality, diversity and human rights
 - Gifts and hospitality
 - Health and safety
 - Information security and governance
 - Manual handling
 - Social media and twitter
 - Speak up policy

- Travel and expenses – Specialist Advisors

You may be notified of other applicable policies and procedures by CQC from time to time. For the avoidance of doubt, the policies and procedures of the CQC are not incorporated into this Agreement and they can be withdrawn, varied or replaced by CQC from time to time in its absolute discretion.

9.3. CQC recognises that in the course of your regular work outside of CQC you may be asked to speak at conferences or make presentations to various groups. In these presentations you may wish to use your experiences of participating in CQC inspections to illustrate your talk. In such circumstances you must:

- 9.3.1. notify the conference organisers that you are not speaking on behalf of CQC;
- 9.3.2. not purport to be appearing and/or speaking for or on behalf of CQC;
- 9.3.3. anonymise any data from which an individual could be identified; and
- 9.3.4. not breach the confidentiality provisions as set out in this Agreement or any relevant CQC policy on confidentiality.

You are advised to seek guidance from CQC if you are unsure as to your obligations under this clause 9.3 and how they apply to a given set of circumstances.

- 9.4. Occasionally you may be asked to speak on behalf of CQC and this would be through our "speaker bids" coordinator. In these circumstances your title and the title and content of your talk would be agreed by CQC.
- 9.5. You must also complete any mandatory training requirements which will be specified by CQC.

10. Good faith

- 10.1. While working on an Assignment or undertaking activity for CQC, you must devote your time, attention and skill to the business and interests of CQC in a proper and efficient manner and use your best endeavours to develop, maintain and extend that business.
- 10.2. You will notify CQC of any possible or potential conflict of interest which may result from any other activities that you undertake. You shall take such steps as CQC may reasonably decide (after consultation with you) to manage any actual or potential conflict. Notification of conflicts will be managed on appointment and prior to any acceptance of an Assignment as outlined by the Declaration of Interest and Resolution of Conflicts policy (as amended from time to time).
- 10.3. If you are in breach of any of the terms of this Agreement you must immediately disclose the breach to CQC.
- 10.4. You must not, without the prior written consent of CQC, use or otherwise turn to your advantage, either directly or indirectly, knowledge gained from undertaking activities on behalf of CQC, or from any connection with CQC or any of the CQC clients or other business contacts.

10.5. If you create or develop (either alone or with others) any works, designs, inventions, improvements, processes or trademarks in the course of your activity with CQC, you undertake to execute all documents and effect such assignments as are required to invest the intellectual property rights to CQC.

10.6. You are required to declare to CQC if you work for an organisation that has a rating of Requiring Improvement or Inadequate as this may impact on your credibility as a SpA.

11. Confidential information

11.1. Both during any Assignment and after that Assignment has ended you must keep secret and will not (except as authorised in writing by CQC) use or disclose, or attempt to use or disclose, to any person any Confidential Information. In this Agreement, Confidential Information means information in whatever form relating to CQC (including the organisations which the CQC has superseded) or a registered provider relating to their technical data, technology, methods, financial and other affairs or business or method of carrying on business.

11.2. All records in any medium (whether written, computer readable or otherwise) including accounts, documents, client/patient records and details, drawings and other papers including private notes concerning CQC or a registered provider and all copies and extracts of them made or acquired by you in the course of your activity are the property of CQC and you shall:

- use them only for the purposes of CQC;
- ensure that any personal or confidential information is anonymised so that individual patients or service users cannot be identified from hand written notes or other documentation created or collected during an inspection;
- ensure that all documentation created and used during inspections is handed to the CQC lead inspector at the conclusion of an inspection and that no personal or confidential information is stored or processed on personal or non-CQC IT equipment.

11.3. Your attention is also drawn to the CQC code of practice on confidential personal information and the CQC policy on information security and governance (as amended by CQC from time to time).

12. Personal Property and Return of CQC Property

12.1. CQC accepts no responsibility for damage to or loss of personal property. You are, therefore, recommended to take out an insurance policy to cover your personal property.

12.2. You shall promptly, whenever requested by CQC and in any event upon the termination of this Agreement, deliver up to CQC any property, documents, records, papers or software storage media and all other items which may have been prepared by you or have come into your possession, custody or control in the course of your activity with CQC, and you shall not be entitled to and shall not retain any copies of them.

13. Health and safety

- 13.1. You must comply fully with any health and safety rules and/or regulations notified to you by CQC.
- 13.2. It is your duty to take reasonable care for your own health and safety and that of other persons who may be affected by your acts or omissions at work and to co-operate with CQC so far as is necessary to perform any duty or comply with any requirement imposed by any relevant law.

14. Termination of Agreement

- 14.1. This Agreement may be terminated for any reason by either party giving the other 4 weeks' prior written notice. If you no longer wish to be considered for SpA activity by CQC you should inform the Flexible Workforce Office via email to FlexibleWorkforce@cqc.org.uk.
- 14.2. CQC may terminate this Agreement summarily (i.e. with immediate effect without prejudice to any rights or claims that it may have against you) if it considers you have committed any serious or repeated breach of the terms of this Agreement or that you have committed an act of gross misconduct. Set out below is a non-exhaustive list of circumstances in which the CQC is entitled to terminate this Agreement with immediate effect:
- 14.2.1. You engage in unacceptable behaviour contrary to CQC's values and behaviours as outlined within the organisation whilst representing CQC.
 - 14.2.2. You engage in dishonesty, theft, gross negligence or commit a breach of your duties to CQC;
 - 14.2.3. You bring the CQC into disrepute including by making derogatory comments about CQC at public or minuted private meetings.
 - 14.2.4. You utilise involvement with an inspection for personal gain, such as consultancy work.
 - 14.2.5. Following an investigation, you are found to have made frivolous, vexatious or abusive complaints or allegations.
 - 14.2.6. You fail to declare at either the recruitment stage or during the term of your engagement any professional restrictions / ongoing investigations to which you are subject.
 - 14.2.7. You fail to declare any previous criminal conviction or fail to provide further information as and when requested by the Flexible Workforce Office.
 - 14.2.8. You make inappropriate use of social media, such as Facebook, Twitter, Internet blogs, including making any derogatory comments aimed at CQC or individuals employed by the organisation as well as individuals connected to service providers / users.
 - 14.2.9. CQC receives unsatisfactory feedback concerning your performance (following discussion with an appropriate Directorate lead).
 - 14.2.10. You relinquish a relevant mandatory professional registration (GMC, NMC, GDC, GPhC).
 - 14.2.11. You are no longer active in clinical practice and you fail to undertake/pass a skills assessment as required by the Directorates (where applicable).
 - 14.2.12. You are dismissed from your substantive employment.
 - 14.2.13. You have a conflict of interest which directly impacts on your SpA role.

14.3. Without prejudice to the general principle that CQC is not obliged to offer you any work under the terms of this Agreement, set out below is a non-exhaustive list of circumstances in which you will not be eligible to be offered any Assignments:

14.3.1. Pending the outcome of a criminal investigation.

14.3.2. Pending the outcome of a complaint from a provider.

14.3.3. Pending the outcome of a professional registration fitness to practice investigation which has required restrictions on practice.

14.3.4. Pending the outcome of any allegations made regarding conduct or behaviour outside of the feedback process.

14.3.5. Pending the outcome of suspension by your substantive employer.

14.3.6. On a case by case basis where your own organisation is found to be Requiring Improvement or Inadequate. This decision will be managed by the relevant Deputy Chief Inspector for the Directorate.

14.4. You may request not to be considered for Assignments for a period of time, whether for personal or other reasons, as deemed appropriate in agreement with the Directorate, for example if you are leaving the country for a period of time.

14.5. For roles which require professional registration, such as those covered by the NMC or HCPC, you are expected to maintain the aforementioned professional registration which allows you to practise.

14.6. You must inform the Flexible Workforce Office when you cease to work in clinical practice or when you relinquish your GMC licence to practise. The Directorates will review your position 2 years from that date.

14.7. The rights of CQC under this clause 14 are without prejudice to any other rights that it might have at law to terminate this Agreement. Any delay by the CQC in exercising its rights to terminate shall not constitute a waiver of these rights.

15. Liability Insurance

15.1. The CQC's liability to individuals who are contracted on "terms of engagement" on a non-permanent basis, in respect of personal injury and death, is covered under our membership of NHSLA's Liabilities to Third Parties Scheme (LTPS). Similarly, that scheme covers both the individual and the organisation in respect of professional liabilities incurred whilst such individuals are working for CQC. In both cases, cover applies where agreed and pre-determined business on behalf of CQC is being performed.

16. Totality of terms

16.1. The CQC reserves the right to make changes to the terms set out in this Agreement. CQC will give you 1 calendar month's prior written notice of any changes.

16.2. Subject to clause 16.1, this Agreement is intended to reflect fully the intentions and expectations of both parties as to our future dealings and in the event of any dispute regarding your engagement by CQC it shall be regarded as a true, accurate and exhaustive record of the terms on which we have agreed to enter into.

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