

# Clients Terms Of Business For Supplying Temporary Staff Services

## 1. DEFINITIONS

1.1. In these Terms of Business the following definitions apply:

**"Assignment"** means the period during which the Locum is supplied by the Employment Business to render services to the Client;

**"Client"** means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to whom the Locum is supplied or introduced;

**"The Employment Business"** means Locum Select Ltd of 3 & 5 Commercial Gate, Mansfield, NG18 1EJ;

**"Engages/Engaged/Engagement"** means the engagement, employment or use of the Locum directly by the Client or any third party or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Locum is an officer or employee

**"Locum"** means the individual who is introduced by the Employment Business to render services to the Client.

**"Transfer Fee"** means the fee payable in accordance with clause 7.1 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**"Introduction Fee"** means the fee payable in accordance with clause 7.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**"Introduction"** means (i) the Client's interview of a Locum in person or by telephone, following the Client's instruction to the Employment Business to supply a Locum; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Locum; and which leads to an Engagement of that Locum.

**"Remuneration"** includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Locum for services rendered to or on behalf of the Client or any third party. Where a company car is provided, a notional amount of £3000 will be added to the salary in order to calculate the Employment Business' fee.

1.2. Unless the context otherwise requires, references to the singular include the plural.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

2.1. These Terms constitute the contract between the Employment Business and the Client for the supply of the Locum's services by the Employment Business to the Client and are deemed to be accepted by the Client by virtue of its request for, interview with or Engagement of the Locum or the passing of any information about the Locum to any third party following an Introduction.

2.2. These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.

2.3. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

2.4. The Employment Business shall act as an employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when introducing Locums for Assignments with the Client.

## 3. CHARGES

3.1. The Client agrees to pay such hourly charges of the Employment Business as shall be notified to and agreed with the Client. The hourly charges are calculated according to the number of hours/days worked by the Locum Doctor (to the nearest quarter hour/half day) and comprise mainly the Locum's hourly/daily rate but also include the Employment Business' commission calculated as a percentage of the Locum's hourly rate and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. VAT, if applicable, is payable on the entirety of these charges.

3.2. The charges are invoiced to the Client on a weekly basis and are payable within 21 days of date of invoice. The Employment Business reserves the right to charge interest on any overdue amounts at the rate of 4% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

3.3. There are no rebates payable in respect of the charges of the Employment Business [other than those set out in clause 7 below].

## 4. INFORMATION TO BE PROVIDED

4.1. When making an Introduction of a Locum to the Client the Employment Business shall inform the Client of the identity of the Locum; that the Locum has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment; whether the Locum will be employed by the Employment Business under a contract of service or apprenticeship or a contract for services; and that the Locum is willing to work in the Assignment.

4.2. Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or Bank holiday) following, save where the Locum is being introduced for an Assignment in the same position as one in which the Locum had previously been supplied within the previous five business days and such information has already been given to the Client, unless the Client requests that the information be resubmitted.

## 5. TIMESHEETS

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 shall sign the Employment Business' time sheet verifying the number of hours worked by the Locum during that week.

5.2. Signature of the time sheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a time sheet produced for authentication by the Locum because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Locum. Failure to sign the time sheet does not absolve the Client's obligation to pay the charges in respect of the hours worked.

5.3. The Client shall not be entitled to decline to sign a timesheet on the basis that he is dissatisfied with the work performed by the Locum. In cases of unsuitable work the Client should apply the provisions of clause 10.1 below.

## 6. PAYMENT OF THE LOCUM

6.1. The Employment Business assumes responsibility for paying the Locum and where appropriate, for the deduction and payment of National Insurance Contributions and PAYE Income Tax applicable to the Locum pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

## 7. TRANSFER AND INTRODUCTION FEES

### 7.1. Transfer Fees where a worker has been supplied

In the event of the Engagement by the Client of a Locum supplied by the Employment Business for an Assignment either (1) directly or (2) pursuant to being supplied by another employment business, during the Assignment or within whichever is the longer of either:

7.1.1. 14 weeks from the start of the first Assignment (each new Assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or

7.1.2. 8 weeks from the day after the last day the Locum worked on the Assignment the Client shall be liable, subject to electing by giving 14 days prior notice, to either:

(a) **An extended period of hire** of the Locum Doctor being 26 weeks during which the Client shall pay the current hourly charge agreed pursuant to clause 3.1 for each hour the Locum is so employed or supplied; or

(b) **A Transfer Fee** calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1 multiplied by 300 times the hourly charge. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT, if applicable, is payable in addition to any fee due. However, where the client does not give such notice before the Locum is Engaged the parties agree that the Transfer Fee shall be due.

### 7.2. Introduction Fees where a worker is introduced but not supplied

7.2.1. In the event that there is an Introduction of a Locum to the Client which does not result in the supply of that Locum by the Employment Business to the Client, but which leads to an Engagement of the Locum by the Client either directly or pursuant to being supplied by another employment business within 6 months from the date of Introduction the Client shall be liable, subject to electing upon giving 14 days notice, to either:

(a) **A period of hire** of the Locum being 26 weeks during which the Client shall pay the hourly charges agreed pursuant to clause 3.1 above for each hour the Locum is so employed or supplied; or

(b) **An Introduction Fee** calculated as follows: 20% of the Remuneration applicable during the first 12 months of the Engagement or, if the actual amount of the Remuneration is not known, the hourly charges agreed pursuant to clause 3.1

multiplied by 300 times the hourly charge. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT, if applicable, is payable in addition to any fee due. However, where the client does not give such notice before the Locum is Engaged the parties agree that the Transfer Fee shall be due.

7.3. In the event that the Engagement of the Locum is for a fixed term of less than 12 months, the fee in clause 7.1.1(b) or 7.2.1(b), calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Locum within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.

### 7.4. Inability to supply during the period of hire

7.4.1. If the Client elects for a period of hire, as set out in clauses 7.1.2 (a) or 7.2.1 (a), but before the end of such period Engages the Locum supplied by the Employment Business either directly or pursuant to being supplied by another employment business or the Locum chooses not to be supplied for the period of hire, the Transfer or Introduction Fee calculated in accordance with either 7.1.2(b) or 7.2.1(b) may be charged, reduced by such percentage to reflect any period of hire already undertaken by the Locum and paid for by the Client.

7.4.2. Where period(s) of absence due to illness or injury prevent the Locum from being employed or supplied for 4 or more days, which shall be qualifying days for the purposes of Statutory Sick Pay (SSP), during the period of hire as set out above, the period of hire shall be extended by a period equivalent to the total period of absence. Where the Employment Business pays the Locum SSP during the period of hire an equivalent amount shall be charged to and be payable by the Client in addition to the charges agreed pursuant to clause 3.1.

### 7.5. Transfer Fees where there has been an Introduction to and Engagement by a Third Party

In the event that a Locum supplied to a Client is introduced by the Client to a third party which results in the Engagement of the Locum by the third party during the Assignment or within whichever is the longer of either:

7.5.1. 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or

7.5.2. 8 weeks from the day after the last day the Locum worked on the Assignment

The Client shall be liable to pay a Transfer Fee calculated in accordance with clause 7.1.2 (b)

### 7.6. Introduction Fees where there has been an Introduction but No Supply resulting in an Engagement by a Third Party

7.6.1. In the event that there is an Introduction of a Locum to the Client which does not result in the supply of that Locum by the Employment Business to the Client, but the Locum is introduced by the Client to a third party which results in the Engagement of the Locum by the third party within 6 months from the date of Introduction the Client shall be liable, to an Introduction Fee calculated in accordance with clause 7.2.1 (b)

## 8. LIABILITY

8.1. Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from the Locum and to provide the same in accordance with the Assignment details provided by the Client, no liability is accepted by the Employment Business for any loss, expense, damage, costs or delay arising from the failure to provide a Locum for all or part of the period of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Locum or if the Locum terminates the Assignment for any reason. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.

8.2. Locums provided by the Employment Business to the Client are not under the direction and control of either the Client or the Employment Business as to the manner in which they perform their work for the duration of the Assignment and the Locum will hold adequate Professional Indemnity insurance in respect of his/her services. Nevertheless the Client will comply in all respects with all relevant statutes, by-laws and legal requirements including provision of adequate Public Liability insurance in respect of the Locum Doctor. The Client shall indemnify the Employment Business against any costs, claims, damages and expenses incurred by the Employment Business as a result of any breach of these Terms by the Client. Nothing in this clause shall prejudice the Client or the Employment Business's entitlement to terminate the Assignment in accordance with clause 10 below.

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**8.3.** The Client shall advise the Employment Business of any special health and safety matters about which the Employment Business is required to inform the Locum and about any requirements imposed by law or by any professional body, which must be satisfied if the Locum is to fill the Assignment. The Client will assist the Employment Business in complying with the Employment Business' duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under these Regulations. Where the Client requires or may require the services of a Locum for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.

**8.4.** The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Locum for the Locum to fill the Assignment.

**8.5.** The Client undertakes not to request the supply of a Locum to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed someone who has been transferred by the Client to perform the duties of the person on strike or taking official industrial action.

**8.6.** The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of any non-compliance with clauses 8.2, 8.3 and 8.5 and/or as a result of any breach of these Terms by the Client.

## 9. SPECIAL SITUATIONS

**9.1.** Where the Locum is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity or who is otherwise in need of care or attention, the Employment Business will take all reasonably practicable steps to obtain and offer to provide to the Client:

**(a)** Copies of any relevant qualifications or authorisations of the Locum, and

**(b)** Two references from persons not related to the Locum who have agreed that the references they provide may be disclosed to the Client and has taken all reasonably practicable steps to confirm that the Locum is suitable for the Assignment. If the Employment Business is unable to do any of the above it shall inform the Client of the steps it has taken to obtain this information in any event.

## 10. TERMINATION

**10.1.** The Client undertakes to monitor the Locum sufficiently to ensure the Client's satisfaction with the Locum's standards of workmanship. If the Client reasonably considers that the services of the Locum are unsatisfactory, the Client may terminate the Assignment either by instructing the Locum to leave the Assignment immediately, or by directing the Employment Business to remove the Locum. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Locum, provided that the Assignment terminates: -

**(a)** Within four hours of the Locum Doctor commencing the Assignment where the booking is for more than seven hours; or

**(b)** Within two hours for bookings of seven hours or less; And also provided that notification of the unsuitability of the Locum is confirmed in writing to the Employment Business within 48 hours of the termination of the Assignment.

**10.2.** Any of the Client, the Employment Business or the Locum may terminate an Assignment at any time without prior notice and without liability.

**10.3.** The Client shall notify the Employment Business immediately and without delay and in any event within 24 hours if the Locum Doctor fails to attend work or notifies the Client that the Locum is unable to attend work for any reason.

**10.4.** The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Locum supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment forthwith by notice in writing without prior notice and without liability.

## 11. GENERAL

**11.1.** All notices sent pursuant to these Terms shall be in writing. Notices may be sent by post, by fax or email. Correctly addressed notices sent by prepaid first class post to the registered office of a party shall be deemed to have delivered 2 days after posting. Correctly directed fax transmissions shall be deemed to have been received on transmission as evidenced by the transmission report. Correctly addressed emails shall be deemed to have been delivered on despatch as evidenced by hard copy printout.

**11.2.** the Client hereby grants the Employment Business the right to:

**(a)** advertise vacancies for potential locums in any medium it deems appropriate; and

**(b)** use its name and logo on its website, client list and its promotional literature.

## 12. LAW

**12.1.** These Terms are governed by the law of England & Wales and are subject to the exclusive jurisdiction of the Courts of England & Wales.

## AGREEMENT

I confirm that I have read, understood and agree to adhere to these Terms

\_\_\_\_\_  
Signed for and on behalf of The Client

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date