

## **CLIENT TERMS OF BUSINESS - SUPPLYING LOCUM SERVICES**

*(For Locums subject to deduction for PAYE and NI Contributions)*

### **1. DEFINITIONS**

1.1 In these Terms of Business the following definitions apply:

<b>“Assignment”</b>	means the period during which the Locum is supplied to render services to the Client;
<b>“Client”</b>	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;
<b>“The Employment Business”</b>	means MedSol Healthcare Services Limited of 5 Gold Street, Northampton, NN1 1RA trading as Locumpages.com
<b>“Engages/Engaged/Engagement”</b>	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
<b>“Locum”</b>	means the individual who is introduced by the Employment Business to render services to the Client.
<b>“Transfer Fee”</b>	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.
<b>“Introduction Fee”</b>	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.
<b>“Introduction”</b>	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.
<b>“Remuneration”</b>	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 7.5% 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 MedSol Healthcare, 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.

### **3 NOTIFICATION & FEES**

3.1 The client agrees:

- A) To notify the Agency immediately of any offer of an Engagement which it makes to the Applicant;
- B) To notify the Agency immediately that its offer of an Engagement to the Applicant has been accepted and to provide details of the Remuneration to the Agency; and
- C) To pay the Agency's fee within 21 days of the date of invoice

3.2 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 worked by the Locum (to the nearest quarter hour) and comprise mainly the Locum's hourly rate but also include the Employment Business' commission calculated as a percentage of the Locum's hourly rate, employer's National Insurance contributions 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 Employment Business's commission in accordance with HMCE Business Brief 10/04

3.3 The charges are invoiced to the Client on a weekly basis and are payable within 21 days. 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 Lloyds TSB Bank from the due date until the date of payment.

3.4 There are no rebates payable in respect of the charges of the Employment Business.

### **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 TIME SHEETS**

5.1 At the end of each week of an Assignment (or at the end of the Assignment where it is for a period of one week or less) the Client 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.

5.4 Where the Locum fails to submit a properly authenticated time sheet the Employment Business shall, in a timely fashion, conduct further investigations into the hours claimed by the Locum and the reasons that the client has refused to sign a timesheet in respect of those hours. This may delay any payment due to the Locum. The Employment Business shall make no payment to the Locum for hours not worked.

5.5 For the avoidance of doubt and for the purposes of the Working Time Regulations, the Temporary Worker's working time shall only consist of those periods during which s/he is carrying out activities or duties for the Client as part of the Assignment. Time spent travelling to the client's premises; lunch breaks and other rest breaks shall not count as part of the Locum's working time for these purposes.

## **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.

6.2 Subject to clause 5.4 The Employment Business shall pay the Locum for all hours worked regardless of whether the Employment Business has received payment from the Client for those hours.

## **7. TRANSFER & INTRODUCTION FEES**

### **7.1 Transfer fees where a Locum has been supplied**

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

- 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
- 8 weeks from the day after the last day the Locum worked on the Assignment

the Client shall be liable, to either an extended period of hire or a Transfer Fee the length or amount of which is to be agreed between the Employment Business and the Client.

7.1.2 The Client must give the Employment Business 7 days' written notice in advance of the Engagement if the Client elects to take the worker for the period of extended hire.

7.1.3 If the client does not give such notice before the Locum is engaged the parties agree that the Transfer Fee shall be due.

7.1.4 If the parties do not agree a period of extended hire or a Transfer Fee in accordance with 8.1.1 then the following shall be deemed to have been agreed:

- a) The length of the extended period of hire shall be 52 weeks during which the Client shall pay the current hourly charge agreed pursuant to clause 3.2 for each hour the Locum is so employed or supplied; **or**
- b) The amount of the Transfer fee shall be calculated as follows: 22.5% 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 3.2 multiplied by 337.5. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee 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 by the Client of the Locum by the Client either (1) directly or (2) pursuant to being supplied by another employment business within 6 months of the date of the Introduction the Client shall be liable, to either a period of hire or an Introduction Fee the length or amount of which is to be agreed between the Employment Business and the Client.

- 7.2.2 The Client must give the Employment Business 7 days' written notice in advance of the Engagement if the Client elects to take the worker for the period of hire.
- 7.2.3 If the client does not give such notice before the Locum is engaged the parties agree that the Introduction Fee shall be due.
- 7.2.4 If the parties do not agree a period of hire or an Introduction Fee in accordance with 8.2.1 then the following shall be deemed to have been agreed:
- a) The length of the period of hire shall be 52 weeks during which the Client shall pay the hourly charge agreed pursuant to clause 3.2 for each hour the Locum is so employed or supplied; **or**
  - b) The amount of the Introduction fee shall be calculated as follows: 22.5% 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 3.2 multiplied by 337.5. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates. VAT is payable in addition to any fee 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 8.1.4(b) or 8.2.4(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 above in clause 8.1 or 8.2, 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 set out in clauses 8.1 or 8.2 may be charged, reduced by such percentage to reflect any period of extended 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 3.2.
- 7.5 Transfer Fees where there has been Introduction to and Engagement by a Third Party**
- 7.5.1 In the event that the **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
- 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
  - 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 the amount of which is to be agreed between the Employment Business and the Client.
- 7.5.2 If the parties do not agree a Transfer Fee in accordance with 8.5.1 then the Client will be liable to pay a Transfer Fee calculated in accordance with clause 8.1.4 (b) above.
- 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 8.2.4 (b) above.

## **9.0 CONDUCT OF ASSIGNMENTS**

- 9.1 The Locum is not obliged to accept any Assignment offered by the Employment Business but if s/he does so, during every Assignment and afterwards where appropriate, s/he will: –
- a) Co-operate with the Client's reasonable instructions and accept the direction, supervision and control of any responsible person in the Client's organisation;
  - b) Observe any relevant rules and regulations of the Client's establishment (including normal hours of work) to which attention has been drawn or which the Locum might reasonably be expected to ascertain;
  - c) Take all reasonable steps to safeguard his or her own health and safety and that of any other person who may be present or be affected by his or her actions on the Assignment and comply with the Health and Safety policies and procedures of the Client;
  - d) Not engage in any conduct detrimental to the interests of the Client;
  - e) Not at any time divulge to any person, nor use for his or her own or any other person's benefit, any confidential information relating to the Client's or the Employment Business' employees, business affairs, transactions or finances.
- 9.2 If the Locum is unable for any reason to attend work during the course of an Assignment s/he should inform the Client and/or the Employment Business within one hour of the commencement of the Assignment or shift.
- 9.3 If, either before or during the course of an Assignment, the Locum becomes aware of any reason why he may not be suitable for an Assignment, he shall notify the Employment Business without delay.

## **10 TERMINATION**

- 10.1 The Employment Business or the Client may terminate the Locum's Assignment at any time without prior notice or liability.
- 10.2 The Locum may terminate an Assignment at any time without prior notice or liability.
- 10.3 If the Locum does not inform the Client or the Employment Business [in accordance with clause 8.2] should they be unable to attend work during the course of an assignment this will be treated as termination of the assignment by the Locum in accordance with clause 9.2 unless the Locum can show that exceptional circumstances prevented him or her from complying with clause 8.2.
- 10.4 If the Locum is absent during the course of an assignment and the contract has not been otherwise terminated under clauses 9.1, 9.2 or 9.3 above the employment business will be entitled to terminate the contract in accordance with clause 9.1 if the work to which the absent worker was assigned is no longer available for the Locum.
- 10.5 If the Locum does not report to the Employment Business to notify his/her availability for work for a period of three weeks, the Employment Business will forward his/her P45 to his/her last known address.

## **11 LAW**

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

## **12 Other**

- 12.1 The Client agrees with the Agency that the Client shall be responsible for all acts, errors and omissions of each Locum whether willful, negligent or otherwise. The Client shall effect and maintain throughout each Service Period adequate public liability and other normal insurance cover in respect of the provision of the Services by the Agency and every such Locum.
- 12.2 The Client will further indemnify the Agency against any costs, claims, damages and expenses incurred by the Agency arising out of the performance of the subcontracted Service by each such Locum to the Client during each Service Period.