



## TERMS OF BUSINESS - INTRODUCTION & SUPPLY OF LOCUMS

### 1. DEFINITIONS I. INTERPRETATION

1.1. In these Terms of Business (**Terms**), the following definitions apply:

**Agency Worker** means an agency worker within the meaning of the AWR who may be (i) engaged directly by the Company under a contract for services or (ii) employed by an Intermediary under a contract of service;

**Assessment** means a written assessment, in a format acceptable to the Company, as to whether the Assignment falls within the scope of the Public Sector Rules;

**Assignment** means the temporary role or project which the Locum shall undertake for the Client;

**Assignment Schedule** means the document confirming details of the Assignment which is issued to the Client by the Company;

**AWR** means the Agency Workers Regulations 2010;

**Charges** means the charges made by the Company for the supply of the Locum including the Locum's hourly or daily rate, the Company's commission and, where relevant, any Employer's National Insurance contributions, pension contributions, apprenticeship levy, holiday pay and additional monies due pursuant to the AWR;

**Client** means the person, firm, company or body to which the Locum is Introduced by the Company;

**Company** means Arevna Limited (Registered in England & Wales No. 11407187) whose registered office is at 71 – 75 Shelton Street, London WC2H 9JQ

**Conduct Regulations** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**Consultancy** means a limited company or limited liability partnership supplied by the Company to perform the Services;

**Data** means personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

**Data Protection Legislation** means the Data Protection Act 1998, the General Data Protection Regulation and all other relevant legislation relating to data privacy;

**Employee** means a director or employee of the Company with whom the Client has had material dealings;

**Engagement** means the engagement, employment or use of the Locum by the Client (or relevant third party) on any basis whatsoever, whether directly or through any party other than the Company. Engage, Engages and Engaged shall be interpreted accordingly;

**Extended Hire Period** means an extension of the Assignment for 20 weeks following expiry of the Client's notice under clause 7.5;

**Intermediaries Legislation** means Chapter 8 or Chapter 10 of Part 2 of ITEPA;

**Intermediary** means a third-party company which is engaged by the Company to provide an Agency Worker;

**Introduction** means (i) the provision by the Company to the Client of a CV or other information which expressly or impliedly identifies a Locum (ii) the arrangement of an interview or meeting between the Client and a Temporary whether face to face, by telephone or by web/video conference or (iii) the supply of a Locum; and "Introduces" and "Introduced" shall be interpreted accordingly;

**ITEPA** means the Income Tax (Earnings and Pensions) Act 2003;

**Locum** means the person, firm or limited company Introduced to the Client by the Company to perform an Assignment and, save where otherwise indicated, includes a Consultancy, Representative and Agency Worker;

**Payment Terms** means 30 days from the date of the Company's invoice; Public Authority means a public authority within the meaning of section 61L of ITEPA; Public Sector Rules means section 61M of ITEPA;

**Relevant Period** means the later of (i) the period of 8 weeks commencing on the day after the Locum last worked for the Client during an Assignment or (ii) the period of 14 weeks commencing on the first day on which the Locum worked for the Client during an Assignment but, in determining the first day on which the Locum worked for the Client, a prior Assignment shall be disregarded where more than 42 days have passed between Assignments;

**Remuneration** means (i) the gross annualised remuneration package payable to the Locum by the Client including, without limitation, basic salary, guaranteed and anticipated bonuses, guarantee payments, commission, allowances and all other emoluments or (ii) if the Locum is Engaged on a self-employed basis, via a personal services company or through any third party company, firm or business, the total estimated annualised fees payable by the Client in respect of the Locum's services;

**Representative** means the director, officer or employee of a Consultancy who performs the Services on behalf of the Consultancy;

**Restricted Period** means the later of (i) six months from the end of an Assignment or (ii) six months from the most recent Introduction of the Locum to the Client;



**SDC** means supervision, direction or control as to the manner in which the Services are carried out; Services means the work to be carried out by the Locum during the course of the Assignment as described in the Assignment Schedule;

**Transfer Fee** means the fee payable by the Client upon the Engagement of a Locum pursuant to clause 7: and

**WTR** means the Working Time Regulations 1998.

1.2. Unless the context requires otherwise, references to the singular include the plural and references to the masculine include the other genders.

1.3. Any reference to a person includes both a legal person and a natural person.

1.4. A reference to a party means either the Company or the Client and a reference to the parties means both the Company and the Client.

1.5. Any phrase introduced by the words including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those words.

1.6. Any reference to legislation includes any amendment or re-enactment of such legislation from time to time and any secondary legislation which may be made under such legislation. 1.7. The headings in these Terms are for convenience only and do not affect the interpretation of any clause.

## **2. BASIS OF CONTRACT**

2.1. These Terms, together with the Assignment Schedule, comprise the entire agreement between the Company and the Client for the supply of a Locum to the Client to the exclusion of any alternative terms which are proposed by the Client. In the event of any conflict or inconsistency between the documents, the Assignment Schedule shall take priority.

2.2. These Terms shall be deemed to have been accepted by the Client upon signing them or otherwise expressly indicating their acceptance in writing, instructing the Company to supply a Locum or Engaging the Locum. whichever occurs first.

2.3. The Client shall not rely on any statement, promise or representation made or given by or on behalf of the Company which is not set out in these Terms.

2.4. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Company and the Client, 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.

2.5. For the purposes of the Conduct Regulations. the Company shall be acting as an Employment Business when Introducing or supplying a Locum under these Terms.

2.6. The Conduct Regulations shall apply to any Assignment which is carried out by a Locum.

## **3. CLIENT OBLIGATIONS**

3.1. The Client must:

3.1.1. Exercise supervision, direction and control over the Locum, save where clause 3.4.4 applies;

3.1.2. Carry out all necessary risk assessments and provide a safe working environment for the Locum;

3.1.3. Provide all necessary safety and personal protective equipment for the Locum to use during the Assignment;

3.1.4. Comply with all statutory provisions, by-laws, codes of practice and other legal obligations in respect of the Locum's health and safety whilst carrying out an Assignment;

3.1.5. Where appropriate. not permit the Locum to perform Services for more than 48 hours per week on average unless the Company has notified the Client that the Locum has entered into an agreement to exclude the maximum weekly working time pursuant to Regulation 5 of the WTR;

3.1.6. Maintain records of any accident or injury affecting the Locum and provide copies of such records to the Company upon demand; 3.1.7. Ensure that any Locum who is subject to SDC (or the right thereof) is insured under the Client's own insurance policies; and 3.1.8. Indemnify the Company for any claim arising out of or in connection with the death or personal injury of the Locum in the course of or as a result of an Assignment.

3.2. The Client must not and must ensure that its employees, subcontractors and representatives do not unlawfully discriminate against, harass or victimise any Locum.

3.3. Where the Company provides an Agency Worker to perform the Services, the Client must comply with the AWR and assist the Company in complying with the AWR by. without limitation:

3.3.1. Notifying the Company without delay if the Agency Worker has been supplied to the Client by any other Company in the six-month period prior to commencement of the Assignment:

3.3.2. Providing the Agency Worker with access to collective facilities and amenities and information about permanent employment opportunities with the Client;

3.3.3. Where relevant, providing written details to the Company of the relevant terms and conditions which apply to any actual or hypothetical comparator to the Agency Worker together with any amendments to such terms and conditions where appropriate;

3.3.4. Co-operating with the Company in responding to or assisting the Company with responding to any question or complaint made under the AWR in a timely manner;

3.3.5. Permitting a pregnant Agency Worker to attend ante-natal appointments, with pay, during working time after the 12-week qualifying period;

3.3.6. Carrying out a risk assessment in respect of any pregnant Agency Worker and making such adjustments to the Assignment as are necessary to protect the Agency Worker's health and wellbeing or, where necessary, identifying a suitable alternative Assignment within the Client's organisation for the Agency Worker to perform; and

3.3.7. Agreeing to a proportional increase in the Charges where necessary to ensure that the Agency Worker receives equal treatment in respect of all relevant terms and conditions after the 12-week qualifying period.

3.4. Unless the Client is a Public Authority which has deemed the Assignment to fall within the scope of the Public Subject Rules, where the Company provides a Consultancy to perform the Services, the Client agrees:

3.4.1. that the Consultancy may appoint an alternative Representative to perform the Services from time to time and, subject to verifying that the alternative Representative is equally skilled, qualified, security cleared and able to perform the Services, the Client shall accept the appointment of such alternative Representative;

3.4.2. not to move any Consultancy to a different task or project or otherwise materially vary the Assignment without first agreeing such move or variation with the Company.

3.4.3. that the Consultancy shall determine their own schedule when performing the Services and the location in which such Services are performed, subject to the Client's reasonable operational requirements and the specific nature of the Assignment; and

3.4.4. not to exercise or permit any third party to exercise SDC (or assert the right thereof) over the Consultancy during the Assignment. Nothing in this clause shall affect the Client's obligations under clause 3.1.

3.5. The Client must not request the supply of a Locum to perform the duties normally performed by (i) a worker who is taking part in official industrial action or (ii) a worker who has been transferred by the Client to perform the duties of a person taking part in official industrial action.

3.6. The Client must notify the Company immediately if the Client intends to Engage a Locum, extend an Assignment or otherwise vary an Assignment in any way.

#### **4. PROVISION OF INFORMATION**

4.1. The Client must inform the Company of:

4.1.1. The information relating to an Assignment specified in Regulation 18 of the Conduct Regulations including, without limitation, the experience, training, qualifications and any authorisations which the Client considers are necessary, or which are required by law or by any professional body, in particular the General Medical Council and the Core Quality Commission, for the Locum to hold in order to provide the Services;

4.1.2. Whether the Locum requires a DM disclosure or any other check or clearance to carry out the Assignment;

4.1.3. Any Health and Safety information which is relevant to the Assignment;

4.1.4. Such Information as the Company may require to comply with the WTR and the Client shall do nothing to cause the Company to breach the WTR; and

4.1.5. Any reason why it may be detrimental to the interests of the Locum to carry out the Assignment.

4.2. The Client shall assist the Company by providing any information required to allow the Company to comply with its statutory obligations under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable.

4.3. If the Client is a Public Authority or the Assignment otherwise falls within the scope of Chapter 10 of Part 2 of ITEPA, the Client must: 4.3.1. Provide an Assessment to the Company prior to commencement of the Assignment where requested by the Company; 4.3.2. Ensure that any Assessment provided to the Company is accurate; and 4.3.3. Provide all such information as the Company may reasonably require, without delay, to justify or support the Assessment.

4.4. The Client shall indemnify and keep indemnified the Company against any liability for PAYE income tax or National Insurance contributions (including any penalties) suffered or incurred by the Company in relation to any Locum as a result of the Client (i) providing an inaccurate Assessment (ii) failing to provide an Assessment or (iii) failing to comply with clause 3.4.4.

4.5. The Company shall issue an Assignment Schedule to the Client on commencement of the Assignment or otherwise within three business days of its commencement.

**5. TIMESHEETS**

- 5.1. At the end of each week of an Assignment and on the last day of an Assignment, the Client shall approve a timesheet in a format specified by the Company verifying the times worked by the Locum during that week.
- 5.2. The Client shall ensure that the times shown on the Locum's timesheet are correct and that only duly authorised employees of the Client approve the timesheet.
- 5.3. If the Client is unwilling to approve a Locum's timesheet because the Client disputes the time recorded on such timesheet, the Client shall inform the Company without delay and shall provide all such information as the Company shall require enabling the Company to establish the time which was worked by the Locum.
- 5.4. The Client acknowledges that the Company shall rely upon the Client's confirmation of the time worked by the Locum and the Client shall not retrospectively adjust the time confirmed as having been worked by the Locum.
- 5.5. The Client must not refuse to approve a timesheet on the basis that the Client is dissatisfied with the Services or any other matter relating to the Locum but the Client may be entitled to terminate the Assignment in accordance with clause 8 below.

**6. CHARGES**

- 6.1. The Client shall pay the Charges to the Company as specified in the Assignment Schedule.
- 6.2. The Company shall issue an invoice to the Client for the Charges each week and such invoice shall be payable within the Payment Terms. VAT shall be charged at the standard rate on all sums invoiced under these Terms.
- 6.3. The Company may vary the Charges, by giving written notice to the Client, to reflect any additional cost in supplying the Locum as a result of the AWR or any statutory change.
- 6.4. The Company shall not give any refund or rebate in respect of the Charges and the Client shall pay the Charges without set off or deduction.
- 6.5. If an invoice is not paid within the payment terms, the Company may:
  - 6.5.1. Terminate the supply of Locums to the Client without notice;
  - 6.5.2. Pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, charge late payment compensation in respect of such invoice;
  - 6.5.3. Charge interest at the rate of 8% per annum above the base rate of the Bank of England from the due date until the date of payment; and
  - 6.5.4. Refer the collection of such payment to its legal representatives and, in such circumstances, the Client shall be liable for all costs, fees (including legal fees on an indemnity basis), charges and disbursements incurred by the Company in recovering payment from the Client.
- 6.6. The Company shall be responsible for making any payments to the Locum for the Services and, where the Locum is (i) an agency worker or (ii) a Consultancy operating within the Public Sector Rules, the Company shall ensure that such payments are treated as employment income and the appropriate PAYE income tax and National Insurance Contributions are deducted and remitted to Her Majesty's Revenue & Customs.

**7. TRANSFER FEES**

- 7.1. Subject to clause 7.5, the Client shall pay a Transfer Fee if the Client (i) Engages a Locum Introduced by the Company or (ii) introduces the Locum to a third party who Engages the Locum and:
  - 7.1.1. Where the Company has not supplied the Locum to the Client, such Engagement commences within the Restricted Period;
  - 7.1.2. Where the Company has supplied the Locum to the Client, such Engagement commences within the Relevant Period.
- 7.2. An Introduction by the Company shall be deemed to be the effective cause of any Engagement of the Locum under clause 7.1 unless all three of the following conditions apply:
  - 7.2.1. Prior to the Company's Introduction, the Client had been in active discussions with the Locum, directly or through another employment business, with a view to Engaging the Locum; and
  - 7.2.2. The Client provides reasonable evidence of such prior active discussions within five working days of the Company's initial Introduction of the Locum; and
  - 7.2.3. The Client has not arranged to interview or meet with the Locum through the Company or used the Company to facilitate the Engagement of the Locum.
- 7.3. The Transfer Fee shall be a sum equivalent to 20% of the Remuneration payable for the Engagement.
- 7.4. If the Remuneration is not disclosed to the Company or if it is impracticable to calculate the Remuneration, the Transfer Fee shall be the hourly Charge at which the Locum was (or would have been) supplied to the Client multiplied by 360.
- 7.5. The Client may, instead of paying the Transfer Fee, by giving one week's written notice to the Company, request that the Locum provides the Services for the Extended Hire Period, commencing on the date on which such written notice expires.
- 7.6. During the Extended Hire Period, the Company shall supply the Locum:



7.6.1. On terms no less favourable than the terms which applied immediately before the Company received the notice pursuant to clause 7.5; or

7.6.2. Where the Company has not previously supplied the Locum to the Client, on such terms as the Company may reasonably specify.

7.7. If the Company is unable to supply the Locum for any part of the Extended Hire Period for a reason outside of the Company's control or if the Client does not wish to hire the Locum on the terms as set out in clause 7.6, the Client shall pay the Transfer Fee, reduced in proportion to any part of the Extended Hire Period for which the Locum was supplied by the Company following expiry of the Client's written notice under clause 7.5.

7.8. No refund of the Transfer Fee will be given by the Company for any reason.

## **8. TERMINATION OF THE ASSIGNMENT**

8.1. Subject to clauses 8.2, 8.3 and 8.4, either party may terminate an Assignment at any time by giving the notice specified in the Assignment Schedule or, if no period of notice is specified, at any time without notice.

8.2. Irrespective of any notice period specified in the Assignment Schedule, either party may terminate an Assignment without notice if the other party has committed a serious or persistent breach of its obligations under these Terms, if the other party undergoes a change of control or becomes insolvent.

8.3. The Company may terminate an Assignment without notice if it becomes aware of any reason why the Locum is unsuitable to carry out the Assignment.

8.4. The Company shall not be liable if the Locum fails to give the agreed notice, if any, upon terminating the Assignment.

8.5. If the Client terminates an Assignment in circumstances which would require the Company to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007, the Client will provide sufficient information to the Company to allow the Company to discharge any statutory obligations to which it may be subject.

## **9. CONFIDENTIALITY, DATA PROTECTION & ANTI-CORRUPTION**

9.1. The Client acknowledges that, unless otherwise agreed between the parties in writing, both the Company and the Client shall be data controllers in respect of any Data provided by the Company relating to a Locum and accordingly the Client warrants that it shall:

9.1.1. Control and process all such Data in accordance with the Data Protection Legislation;

9.1.2. Provide to the Locum the information specified under Article 14 of the GDPR;

9.1.3. Use such Data solely for recruitment purposes and not for any other purpose without the express consent of the Locum; and

9.1.4. Not disclose any such Data to any third party without the express consent of the Locum.

9.2. Save to the extent that the Company is required to disclose such information to the Locum, the Company shall keep confidential any information provided by the Client in relation to the AWR and not use it for any other purpose.

9.3. The parties warrant that they shall:

9.3.1. Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

9.3.2. Promptly notify the other party of any request or demand for any undue financial or other advantage of any kind in connection with these Terms.

## **10. NON-SOLICITATION**

If the Client makes an offer of employment or engagement to an Employee and the Employee commences such employment or engagement within 3 months of leaving the Company's employment, the Client shall pay to the Company an introduction fee, which shall be a sum equivalent to 20% of the Employee's gross annualised remuneration in the last year of the Employee's service with the Company. The introduction fee shall be payable by the Client within the Payment Terms.

## **11. LIABILITY**

11.1. Whilst the Company shall use reasonable endeavours to supply a Locum to the Client to perform an Assignment, the Company shall not be liable to the Client for any failure to supply a Locum.

11.2. The Company shall not be liable for (i) the acts or omissions of any Locum (ii) any loss, theft or damage to any equipment or other property issued to or used by the Locum during the Assignment (iii) the performance or non-performance of the Services or (iv) any error in the Services.

11.3. In the event of any error or defect in Services which are performed by a Consultancy and notified to the Company within a reasonable period, the Company shall require the Consultancy to remedy such error or defect in its own time and at its own expense. For the avoidance of doubt, this clause shall not apply where the Assignment falls within the Public Sector Rules.

- 11.4. The Company shall not be liable to the Client for any indirect or consequential losses or for any loss of profit, business, reputation or goodwill howsoever arising.
- 11.5. Subject to clause 11.6. the aggregate liability of the Company to the Client in respect of any claim or series of claims arising out of or in connection with these Terms, and whether arising in contract, tort (including negligence), breach of statutory duty or otherwise shall be limited to 10% of the Charges paid by the Client in relation to the relevant Locum in the three-month period immediately prior to such claim arising or, if there was no supply of a Locum or if the claim does not relate directly to the supply of a Locum, the sum of £5,000.
- 11.6. The Company does not exclude liability for death or personal injury arising from its own negligence, for fraud or fraudulent misrepresentation or for any other claim which may not be limited or excluded by law.
- 11.7. All warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 11.8. Any claim which the Client may bring against the Company pursuant to these Terms must be commenced within 12 months of the date on which the Client becomes aware or should reasonably have become aware of such claim.
- 11.9. The Client shall indemnify and keep indemnified the Company against all losses, damages or claims suffered or incurred by the Company as a result of the Client's breach of contract, negligence (or any other tortious act). breach of statutory duty or otherwise.

**12. GENERAL PROVISIONS**

- 12.1. The Client shall not assign any of its rights or obligations under these Terms without the written consent of the Company.
- 12.2. The Company may assign any monies owing from the Client to a third party including, without limitation, a recruitment `finance or factoring company and, if relevant, the right to receive payment under these Terms may be enforced by such third party.
- 12.3. Subject to clause 12.2, the parties do not intend these Terms to be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 12.4. If any part of these Terms is determined by a competent authority to be unenforceable to any extent, such part shall, to that extent, be severed from the remainder of the Terms, which shall continue to be valid to the fullest extent permitted by law.
- 12.5. No failure or delay by a party in exercising any right or remedy under these Terms or by law shall constitute a waiver of that or any other right or remedy. nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.6. Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of their obligations under these Terms if such delay or failure result from events, circumstances or causes beyond their reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations.
- 12.7. These Terms shall be interpreted in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or claim arising between the parties in relation to the construction, interpretation or performance of these Terms.

**I am authorised to agree these Terms on behalf of the Client:**

Signed:	
Print Name:	
Client Name:	
Date:	

If unsigned, these Terms half be deemed to have been accepted in accordance with clause 2.2.

Terms of Business (Temporary) Arevna Limited September 2019