**Locums and alternates - sample agreement**

**Introduction**

**Note:** this sample must not be used without individual legal advice and advice from an experienced professional indemnity insurance broker. This sample is for the guidance of sole practitioners only. Practitioners should seek specific legal advice when entering locum arrangements.

This Agreement is drafted on the basis that the Locum is not an employee of the Practitioner. This is ultimately a question of fact and practitioners are recommended to take legal advice on the proposed relationship with the Locum. This Agreement is not suitable for use with employees.

Draft (4.04.2020) **[Subject to contract]**

Date: 2020

**[*insert name*]**

the Practitioner

**[*insert name*]**

the Locum

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**THIS AGREEMENT** is made this day of 2010

**BETWEEN:**

(1) [***insert name***] whose registered office is at [*insert address*] (the “**Practitioner**”); and

(2) **[*insert name* ]** [*insert address*] (the “**Locum**”).

1. **Interpretation**
   1. In this Agreement, unless inconsistent with the context or as otherwise specified, the following expressions have the following meanings:

this “**Agreement**” means this Agreement for the provision of Services, as varied from time to time in accordance with its terms;

“**Commencement Date**” means [*insert date*];

[**“Insurance Policies”** means commercial general liability insurance cover, employer’s liability insurance cover, professional indemnity insurance cover and public liability insurance cover] [***are there any other policies required?*]**

“**Practitioner’s Business**” means the chartered surveying business of the Practitioner which is carried on principally from [*insert address*];

“**Services**” means the Services provided by the Locum to the Practitioner as set out in Schedule 1.

**Note:** the Services should be agreed in advance and carefully defined.

* 1. The headings in this Agreement are for convenience only and are not to be used as an aid to its construction.
  2. References to clauses are to clauses of this Agreement.
  3. References to persons include bodies corporate, firms and unincorporated associations and references to the masculine gender, where the context so admits, include references to the feminine and vice versa.
  4. The singular includes the plural and vice versa.

1. **Duties in relation to provision of Services**
   1. From [the date of this Agreement] OR [*insert date*] OR [*insert a description of a triggering event e.g. the date on which a period of incapacity of the Practitioner begins*] until termination of this Agreement in accordance with Clause 8 below, the Practitioner shall engage the Locum to provide the Services as specified in Schedule 1 to this Agreement.
   2. When providing the Services under this Agreement the Locum shall:
      1. Devote his time, attention and abilities for a minimum of [*insert number*] days each calendar month to carrying out the Services unless prevented from doing so by accident or ill health;
      2. Comply with such reasonable regulations and directions as the Practitioner may from time to time prescribe in connection with the provision of the Services to the Practitioner;
      3. Use all reasonable endeavours to promote the interests of, and generally act in good faith in relation to the Practitioner’s Business; [and]
      4. [*Clarify whether the Locum can take on new instructions on the Practitioner’s behalf or on his/her personal behalf*.]
   3. The Locum shall use all reasonable care and skill in the provision of the Services and shall ensure that the Services are carried out in a timely and professional manner.
   4. The Locum shall comply with all reasonable standards of safety, take due regard and comply with all safety regulations and all relevant statutory provisions applicable to the Practitioner’s Business, and report to the Practitioner any incident which could give rise to any unsafe working conditions or practices.
   5. The Locum shall not divulge nor utilise outside the Practitioner’s Business confidential, unpublished information relating either to the Practitioner’s Business or to clients.
   6. The Locum shall comply with all obligations and restrictions imposed by any professional or other insurance and/or indemnity policy that operates in relation to the Practitioner’s Business.
   7. The Locum shall comply with all professional conduct rules and legislation relating to the Practitioner's Business.
   8. The Locum shall comply with any data protection and privacy legislation, policies, rules and procedures relating to the Practitioner's Business particularly in so far as they relate to employee and client data.
   9. The Locum shall ensure when providing the Services that the Practitioner's Business remains in full compliance with the terms of the RICS Professional Statement on Client Money Handling and the RICS Client Money Protection Scheme Rules (the Scheme Rules) insofar as they are applicable and that the Locum acts appropriately and with honesty and integrity when handling client or office money.
2. **Location**

The Locum will work mainly from the Practitioner's office but may work at other locations as appropriate including from home. The Locum agrees to travel and to work away from the Practitioner’s office as required by the needs of the Practitioner’s Business.

1. **Remuneration**
   1. In consideration of the provision of the Services, the Practitioner shall pay to the Locum within 14 days of receipt of an invoice submitted in accordance with clause 4.2 a [*hourly/daily*/*weekly*] fee of £[*insert amount*] plus Value Added Tax such fee to be payable by bank transfer.
   2. The Locum shall submit to the Practitioner monthly invoices in arrears which give details of the Services which the Locum has provided and the amount of the fee payable (plus VAT) for such Services during that month.
   3. The Practitioner shall be entitled to deduct from the fees (and any other sums) due to the Locum any sums that the Locum may owe to the Practitioner at any time.
   4. Payment in full or in part of the fees claimed under clause 4 shall be without prejudice to any claims or rights of the Practitioner against the Locum.
2. **Locum’s obligations**
   1. In the event that the Practitioner becomes insolvent, or has a liquidator, receiver, administrator or administrative receiver appointed (or being an individual is subject to a bankruptcy order), or enters into an arrangement with creditors and the Practitioner does not exercise his right to terminate this Agreement pursuant to Clause 8, the Locum will continue to perform the Services on a personal basis until the expiry (or earlier determination in accordance with the provisions hereunder) of this Agreement subject always to the provisions of clause 4.1 being complied with.
   2. The Locum shall indemnify and keep indemnified the Practitioner against any loss he suffers as a result of any claims against him in respect of income tax, national insurance contributions, interest, fines and penalties arising out of the Locum being found or considered to be an employee of the Practitioner.

***Note:*** *this Agreement is drafted on the basis that the Locum is not an employee of the Practitioner. This is ultimately a question of fact and practitioners are recommended to take legal advice on the proposed relationship with the Locum before they assume there will be no employment liabilities/responsibilities.*

1. **Authority and relationship of the parties**
   1. The Locum shall not create or incur any liability or obligation on behalf of the Practitioner (and acknowledges that he has no right to do so) which is beyond the powers granted to the Locum under this Agreement.
   2. The Locum shall not at any time after the termination of this Agreement, either personally or by an agent, directly or indirectly represent himself as being in any way connected with or interested in the Practitioner’s Business.
   3. Neither of the parties to this Agreement is the partner of the other party and nothing in this Agreement shall render the Locum an employee or a partner of the Practitioner.

***Note:*** *see comment under Clause 5.2 above.*

* 1. Other than in the circumstances of the Practitioner’s gross negligence, the Practitioner shall not be liable for any loss (which expression shall include but not be limited to damage to property or financial loss whether direct or consequential but excluding death and personal injury) to the Locum caused by any act or omission of the Practitioner or his servants, agents, contractors or suppliers.

1. **Personal appointments**
   1. The Locum agrees to act in such capacities as are necessary for the proper performance of the Services.
2. **Termination**
   1. This Agreement shall, subject as hereinafter provided, continue in force from the date of the Agreement until [*insert date*] OR [completion of the Services in accordance with Schedule 1] at which time it will terminate automatically and without the need for notice.
   2. This Agreement may be terminated by either party providing to the other [*insert number*] weeks' written notice.

***Note:*** *depending upon the circumstances, the Practitioner may enter a fixed term Agreement or an Agreement determinable by notice. Careful thought must be given to which type of Agreement is employed.*

***Note:*** *if it is not a fixed term Agreement delete clause 8.1.**If it is a fixed term Agreement, consider nevertheless whether to include clause 8.2 to provide for earlier termination on notice.*

* 1. The Practitioner may by written notice terminate this Agreement summarily without liability for compensation or damages if:
     1. The Locum commits any act of gross misconduct or gross negligence in the performance of the Services.
     2. The Locum fails to comply with any of his obligations under this Agreement or any Agreement or deed supplemental to it and the failure (if capable of being remedied) remains unremedied for

[*insert number*] days after being called to the Locum’s attention by written notice from the Practitioner;

* + 1. The Locum dies, becomes bankrupt, has a county court administration, debt relief or enforcement restriction order made against him, makes arrangement with his creditors generally or takes or suffers any similar action as a result of debt;
    2. The Locum is unable to carry out, or prevented from carrying out, or is likely to be unable or prevented from carrying out, some or all of his duties under this Agreement through incapacity or any other cause for any period or periods exceeding a total of [*insert number*] days in any period of [*insert number*] weeks;
    3. Where appropriate, the Locum ceases to be a member of RICS for any reason;
    4. The Locum is guilty of any act which brings the Practitioner into disrepute or which in the Practitioner’s reasonable opinion is prejudicial to his interests; or
    5. The Locum purports to assign the burden or benefits or charge the benefits of this Agreement.

1. **Conflict of interest and other activities**
   1. The Locum will not undertake any employment or engage in any activity or provide any other service which might create a conflict of interest whilst he is providing the Services to the Practitioner and if the Locum is in any doubt he shall seek prior written approval from the Practitioner.
   2. Nothing in this Agreement shall prevent the Locum from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the term of this Agreement provided that:
      1. such activity does not cause a breach of any of the Locum’s obligations under this Agreement; and
      2. the Locum shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the business of the Practitioner without the prior written approval of the Practitioner.
2. **Confidential information**
   1. The Locum acknowledges that in the course of performing the Services he will be exposed to information concerning the Practitioner’s Business which amounts to a trade secret, is confidential or is commercially sensitive and which may not be readily available to others engaged in a similar business to that of the Practitioner or to the general public.
   2. The Locum shall keep secret and shall not at any time either during this Agreement, or after its termination, for whatever reason, use, communicate or reveal to any person for their or another’s benefit, any confidential information concerning the Practitioner’s Business, including the finances or organisation of the Practitioner’s Business or of the Practitioner’s suppliers and/or clients which shall have come to his knowledge during the course of this Agreement. The Locum shall also use all reasonable endeavours to prevent the publication or disclosure of any such information.
   3. For the purposes of this clause and by way of illustration and not limitation, information will *prima facie* be secret and confidential if it is not in the public domain and relates to the Practitioner and to:

[*insert details of categories of confidential information which is of any particular concern*]

***Note:*** *consider carefully whether there are any further categories.*

* 1. The restrictions contained in this clause shall not apply to:
     1. Any disclosure authorised by the Practitioner or required in the ordinary and proper course of the implementation of this Agreement or as required by the order of a court of competent jurisdiction or an appropriate regulatory authority; or
     2. Any information which the Locum can demonstrate was known to the Locum prior to the commencement of this Agreement or is in the public domain otherwise than as a result of a breach of this clause.
  2. Nothing in this Agreement shall prevent the Locum from raising, in an appropriate manner and to an appropriate person, any public interest disclosures (whistleblowing concerns).

1. **Practitioner’s property**

All documents, materials, records, correspondence, papers, notes, memoranda, and information on whatever media and wherever located, and whether or not confidential or a trade secret made by the Locum relating to the Practitioner’s Business and any magnetic discs or other media on which information relating to the Practitioner’s Business is stored, and any keys or other property of the Practitioner, shall be and remain the property of the Practitioner and the Locum shall hand over to the Practitioner immediately on request and in any event upon the termination of this Agreement all such documents, information and other materials referred to in this Clause 11.

1. **Restrictions**
   1. In this Clause 12 the following words have the following meanings: “**Termination Date**” means the date of termination of this Agreement.

“**Relevant Period**” means the period of [*insert number*] months prior to the termination of this Agreement.

“**Restricted Person**” means any person, firm or company who was at any time in the Relevant Period a client of the Practitioner’s Business.

“**Prohibited Business**” means the chartered surveying business carried on by the Practitioner at the Termination Date in which the Locum shall have been concerned at any time in the Relevant Period.

“**Territory**” means [*insert details of the area covered by the Prohibited Business*].

* 1. The Locum hereby undertakes to the Practitioner that during the period of [*insert number* ] months after the termination of this Agreement the Locum

shall not directly or indirectly and whether as principal, agent, director, partner, proprietor, consultant, advisor, Locum, alternate, employee or otherwise canvass or solicit business from or do business with any Restricted Person with whom the Locum shall have had material dealings in the course of providing Services to the Prohibited Business

* 1. The Locum undertakes to the Practitioner that during the period of [*insert number* ] months after the Termination Date he shall not carry on or be interested in any business, firm or activity which competes with the Prohibited Business in the Territory whether as principal, agent, director, partner, proprietor, consultant, advisor, Locum, alternate, employee or otherwise.
  2. Each of the restrictions contained in this Clause 12 are intended to be separate and severable. In the event that any of the said restrictions shall be held void, but would be valid if part of the wording thereof were deleted, such restriction shall apply with such deletion as maybe necessary to make it valid and effective.

***Note:*** *restrictive covenants are not enforceable if they go further than is reasonably necessary to protect legitimate business interests like confidential information and client relationships. Practitioners should in all cases seek legal advice prior to the inclusion of restrictive covenants. The above are illustrative only of the types of clause that might be used.*

1. **Insurance and liability**
   1. The Locum shall have liability for any loss, liability or costs (including reasonable legal costs) incurred by the Practitioner in connection with the provision of the Services and shall accordingly maintain in force during the term of this Agreement full and comprehensive Insurance Policies in respect of the provision of the Services.
   2. The Locum shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Practitioner and that the level of cover and other terms of insurance are acceptable to and agreed by the Practitioner.
   3. The Locum shall notify the insurers of the Practitioner’s interest and shall cause such interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Practitioner against the Locum in respect of which the Locum would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Practitioner directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Practitioner, the Locum shall use all insurance monies received by him to indemnify the Practitioner in respect of any claim and shall make good any deficiency from the Locum’s own resources.
   4. The Locum shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Locum is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Locum shall notify the Practitioner without delay.
2. **Notices**
   1. Any notice or other written communication given under or in connection with this Agreement may be delivered personally or sent by first class post or by facsimile transmission.
   2. The address for service of either party shall be his address as stated in this Agreement or, if any other address for service has previously been notified in writing to the server, to the address so notified.
   3. Any such notice or other written communication shall be deemed to have been served if:
      1. Personally delivered, at the time of delivery;
      2. Posted, at the expiry of two business days after it was posted;
      3. Sent by email, at the time of transmission (if sent during normal business hours, that is 0930 to 1730 local time) in the place from which it was sent or (if not sent during such normal business hours) at the beginning of the next business day in the place from which it was sent.
   4. In proving such service it shall be sufficient to prove that personal delivery was made, or that such notice or other written communication was properly addressed, stamped and posted or in the case of email, correctly addressed and sent.
3. **Miscellaneous**
   1. No term or provision of this Agreement shall be varied or modified by any prior or subsequent statement, conduct or act of any party, except that hereafter the Practitioner and the Locum may amend this Agreement only by letter or written instrument signed by both parties.
   2. This Agreement sets out the entire Agreement and understanding between the parties and is in substitution for any previous Agreement between the Practitioner and the Locum.
4. **Law and jurisdiction**
   1. This Agreement shall be governed in all respects in accordance with English law.
   2. The parties shall attempt to resolve any dispute arising out of or relating to this agreement through negotiation between them. Such negotiations will be commenced by a written invitation to negotiate served by one party on the other/s, and will be conducted by individuals who have authority to settle same.
   3. If the dispute is not resolved by negotiation within 30 days of receipt of such written invitation to negotiate, the parties will attempt to resolve the dispute in good faith with the assistance of an independent mediator who, in default of agreement, shall be a person appointed by the President of RICS. Any party may seek the appointment of the mediator.

16.4 Any such dispute which cannot be resolved through negotiation or mediation, shall be finally determined by a single arbitrator to be appointed by agreement between the parties or, failing agreement, within fourteen days after either/any party has given notice in writing of the intention to refer the dispute to arbitration to the other party/ies, by a single arbitrator appointed by the President of RICS.

This Agreement has been signed on the date first stated on page 1 above.

|  |  |  |  |
| --- | --- | --- | --- |
| Signed by: [ |  | ] |  |
| in the presence of:[ |  |  | ] |
| Signed by: [ |  |  | ] |
| in the presence of:[ |  | ] |  |

**Schedule 1**

[*insert details of the Services*]

[*include details of the role and responsibility of the Locum for bank accounts and client money where the Locum is added as a signatory to any client account of the Practitioner's Business or is given an ordinary or lasting power of attorney]*