



Operations Resource Planning Department

**CONTRACT OF AGREEMENT FOR LOCUM SERVICES**

Version: 1

Date of Issue: February 2015



An agreement for services between Bestway Panacea Holdings Limited (hereafter called 'the Owner') and the person named on page 10 (hereafter called 'the Locum').

## **IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**

### **1. DEFINITIONS**

1.1 In this agreement the following terms shall comprise the following meaning:

- 1.1.1 Fee / Payments – The sum agreed, which includes fees and travelling expenses between the Locum and Owner for an engagement of Services for each day.
- 1.1.2 Booking – means an agreement between the Owner and the Locum for the Locum to provide the Services at specified times and locations on specified dates.
- 1.1.3 Personal Data – the meaning prescribed by the Data Protection Act 1998 and includes all manual information that would be personal information if it were held on a computer.
- 1.1.4 Premises / Pharmacy / Branch –pharmacy premises operated by the Owner where the Locum may be asked to provide the Services.
- 1.1.5 Prohibited Conduct – any prohibited conduct on the grounds of protected characteristics under the Equality Act 2010.
- 1.1.6 Sensitive Data – means personal data consisting of information as to racial or ethnic origin, political opinions, religious beliefs or other beliefs of a similar nature, membership of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), physical or mental health or condition; sexual life, the commission or alleged commission of any offence or any proceedings for any offence committed or alleged to have been committed, including the disposal of such proceedings or the sentence of any court in such proceedings.
- 1.1.7 Services – The provision of the service of a Pharmacist including all NHS Contractual Services specific to the country in which the pharmacy is located, and any other services provided by the Owner at the Pharmacy to which the Locum is assigned, and the Locum holds the required accreditation to undertake.
- 1.1.8 Locum Agreement This document
- 1.1.9 GPhC General Pharmaceutical Council
- 1.1.10 PSNI Pharmaceutical Society of Northern Ireland
- 1.1.11 Regulatory Body GPhc or PSNI
- 1.1.12 PS Team Pharmacy Superintendent's Team
- 1.1.13 Coordinator the Owner representative dealing with the Agency and taking Booking(s).
- 1.1.14 SOP Standard Operating Procedure
- 1.1.15 New Starter Form Form to be completed before Locum can be offered Bookings
- 1.1.16 EPS2 smartcard Electronic Prescription Service Release 2 Smart Card
- 1.1.17 Essential Services Mandatory services all Pharmacies holding a NHS contract must provide
- 1.1.18 Advanced Services Nationally commissioned NHS Services in England and Wales
- 1.1.19 Enhanced Services Locally commissioned NHS Services in England and Wales
- 1.1.20 NHS National Health Service
- 1.1.21 Pharmacist Pharmacist registered with the appropriate regulatory body (GPhC/ PSNI)
- 1.1.22 PVG Protection of Vulnerable Groups Scheme (Scotland only)



- 1.1.23 DBS Disclosure and Barring Service
- 1.1.24 RP Responsible Pharmacist
- 1.1.25 PMR Patient Medication Record

- 1.2 Any reference to the male gender shall include reference to the female gender.
- 1.3 The clause headings to this agreement are for convenience of the parties only and shall not limit or govern or otherwise affect its interpretation in any way.
- 1.4 A reference to any statutory or legislative provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time.

## 2. **LOCUM SERVICES AND OBLIGATIONS**

- 2.1 The Owner shall engage the Locum and the Locum shall provide the Services to the Owner on the terms set out in the Locum Agreement.
- 2.2 The Locum acknowledges that simply by virtue of signing the Locum Agreement, there is no guarantee of the offer of any Booking by the Owner.
- 2.3 For the avoidance of doubt, the Locum Agreement shall not terminate by reason of the termination of a Booking.
- 2.4 The Locum is entitled to accept or decline whichever Bookings with the Owner as he chooses and is under no obligation to accept any particular Booking.
- 2.5 The Locum warrants that by entering into the Locum agreement he will not be in breach of any obligations to or agreement with any third party.
- 2.6 The Owner shall, at its absolute discretion, decide at what times and locations it may offer Bookings to the Locum.
- 2.7 The Owner may change the Pharmacy at which the Locum will provide the Services in any Booking. Locums will accept any such change in location provided that it is within 20 miles of original Booking. If the locum does not accept the change in Pharmacy, then the Booking may be cancelled and the Locum not be entitled to the Fee but will receive a payment equivalent to 2 hours payment plus any agreed and incurred expenses.

## 3. **SUBSTITUTION**

- 3.1 The Locum may arrange in an emergency only for some other Pharmacist of similar stature and experience to provide the Services under the Booking in the Locum's absence ("**Substitute**"), subject always to the Owner's absolute right to refuse to accept any particular Substitute. The Substitute must be agreed in writing by the Owner, prior to the commencement of the Booking.
- 3.2 The Substitute must agree in writing, in a form acceptable to the Owner, to be bound by the terms of the Locum Agreement insofar as they are applicable in providing the Services and must confirm his acceptance and agreement to the warranties and obligations in clause 4 and the provision of such documents as the Owner may require to satisfy itself of the suitability and qualifications of the Substitute.

## 4. **WARRANTIES AND LOCUM OBLIGATIONS**

- 4.1 The Locum, hereby warrants to the Owner that:
  - 4.1.1 he is a registered member of the appropriate Regulatory Body
  - 4.1.2 that he is aware of the Owner's statutory and professional obligations as the provider of the Essential Services;



- 4.1.3 he will complete the New Starter Form and sign the Locum Agreement before he will be offered a Booking.
  - 4.1.4 he is aware the Owner will refer the Locum to the Owner's nominated supplier to undertake a DBS or PVG check and such check must be completed to the Owner's satisfaction before he will be offered any Booking. The Locum acknowledges that he is responsible for the costs associated with completing the DBS/PVG check.
  - 4.1.5 he will carry an active NHS smartcard, where relevant.
  - 4.1.6 he is accredited to offer and deliver any commissioned pharmaceutical services that the Pharmacy provides.
  - 4.1.7 holds the necessary accreditation(s), competence to provide the service.
  - 4.1.8 he shall spend such periods at the Pharmacy when undertaking the Services as will ensure that all statutory and professional obligations are complied with;
  - 4.1.9 he possesses and will maintain his own professional indemnity insurance and registration with the GPhC or PSNI;
  - 4.1.10 he will not engage in any form of Prohibited Conduct;
  - 4.1.11 he will comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 4.1.12 he will immediately notify the Owner in writing if at any time during the provision of the Services he is barred from providing such Services in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made there under, as amended from time to time.
  - 4.1.13 he will inform the Owner if there is any potential conflict of interest which shall include but not be limited to: being a Pharmacy Superintendent, being employed by another provider of the Services, he owns, is a director of or a shareholder in another company or is applying for a competitor pharmacy contact
- 4.2 The Locum shall exercise all professional skills and diligence in the rendering of the Services whilst ensuring the current guidance issued by regulatory bodies and the PS Team is followed at all times.
  - 4.3 The Locum shall not be required by the Owner to perform any managerial duties at the Pharmacy in connection with the running or operation of the Owner's business other than the rendering of the Services and matters strictly incidental thereto. (Managerial duties are any duties defined by HM Revenue and Customs which would compromise the self-employed status of the Locum).
  - 4.4 The Locum shall dress and act in a manner which is conducive to his professional status and which is deemed to be appropriate by the Owner. The Locum shall maintain a high standard of personal hygiene whilst providing the Services.
  - 4.5 The Locum shall comply with Continuing Professional Development requirements, and shall supply evidence of such compliance upon request by the Owner.
  - 4.6 The Locum shall work within the Owner's SOP and shall ensure he is familiar with the SOP and the Essential Guide to SOPs before the Booking. If, in his professional opinion, the Locum needs to operate outside of the SOP he must document his decision and actions on the PMR if appropriate or in the branch diary. If the Locum wishes to operate to his own SOP must submit it to the PS Team five working days prior to commencement of the Booking. The PS Team reserves the right to require a Locum to operate to the Owner's SOP.
  - 4.7 The Locum shall comply with the Owner's Data Protection Policy and the Data Protection Act 1998.
  - 4.8 The Locum will be expected to deliver all Services where accredited and requested by branch colleagues to meet customer needs. In the event that the Locum refuses to provide the Services, save where the Locum has legitimate professional reasons, the Owner shall be entitled to cancel all Bookings and the Locum shall not be entitled to any payment in respect of those cancelled Bookings.
  - 4.9 The Locum will comply with the Responsible Pharmacist Regulations detailed in the Health Act 2006; and the Owner's guidance as detailed in the Responsible Pharmacist SOPs and company guidance.



- 4.10 The Locum acknowledges that the use of mobile phones is prohibited during the Pharmacy opening hours except in emergencies and the internet must only be used for the Owner's business, personal use is prohibited.
- 4.11 The Locum warrants that he is an independent contractor in respect of work undertaken for the Owner. Nothing contained in this Agreement shall render the Locum an employee or worker of the Owner and the Locum shall not hold himself out as such.
- 4.12 Nothing in this Agreement shall constitute the Locum acting as an agent of the Owner. The Locum shall not have any right or power whatsoever to contract on behalf of the Owner or bind it in any way in relation to third parties or create liability against the Owner in any way and for any purposes unless specifically authorised to do so by the PS Team.
- 4.13 Nothing contained in this Agreement shall constitute a partnership or joint venture between the Owner and the Locum.
- 4.14 The Locum must ensure that he and the Substitute hold the appropriate legal status as required by the Home Office as indicated by the Immigration, Asylum and Nationality Act 2006 or any other relevant legislation concerning the right to work in the UK. If the Locum has a valid work permit he must ensure that he adheres to the terms stipulated by the Home Office. The Locum must provide copies of the paperwork to the Owner or the Owner's representative.
- 4.15 The Locum will immediately inform the PS Team of details of any pending investigations by any regulatory, NHS or commissioning body or any other matter which may affect current or future fitness to practise.

## 5. **LOCUM STANDARDS**

- 5.1 Where the Locum requires religious breaks, to attend a place of worship or has any other requirement to leave the Branch, this must be agreed at the time of Booking. An e-mail confirmation from ORPD is required clearly stating they have agreed and the amount of time the pharmacist will be away from the premises. Not all of the Owner's branches can accommodate Locums leaving the premises. Any time the Locum spends away from the Branch will not be paid.
- 5.2 Where the Locum leaves the Branch for breaks without prior agreement and/or without notifying colleagues, resulting in a breach of the RP or NHS regulations, the Owner may terminate that booking and reserves the right to cancel all future Bookings. If future Bookings are cancelled as a result the Locum shall not be entitled to any payment in respect of those cancelled Bookings
- 5.3 The locum should take appropriate rest breaks during the designated rest period for the Branch or at a time that meets the needs of the Owner's business. If the Branch is closed for lunch the Locum will not be paid. If the Branch remains open payment will be made to the Locum provided he remains as Responsible Pharmacist and in the Branch during his break and he is working as sole Pharmacist. The Locum must inform the Branch colleagues of the arrangements he wishes to be in place during rest breaks e.g. interruptions. A Locum shall take responsibility for his fitness to work and ensure he takes designated breaks. If the Locum is unable to meet the business needs of the Branch this should be made clear by the Locum prior to taking any Bookings.
- 5.4 The Locum is required to be ready to provide services at the opening time of the Branch and it is expected that he will arrive in time to allow it to be prepared for opening. If the Locum does not arrive at the Branch opening time; he must notify the Coordinator by phoning one of the emergency numbers. If contact with the Locum is not made within 30 minutes of the Branch scheduled opening time, then the Coordinators will seek alternative cover for the branch. If cover has been arranged before the Locum arrives he will not be entitled to any Fee for that Booking.
- 5.5 Where the Locum fails to attend a Booking at the agreed time, the Owner reserves the right to cancel all future Bookings and the Locum shall not be entitled to any payment in respect of those cancelled Bookings.
- 5.6 The Locum will be paid from time of arrival unless otherwise agreed at the time of Booking. In case of lateness, the Fee will be reduced to reflect the lateness. The deduction will be made in 15 minutes intervals rounding up to the nearest quarter of an hour after. Locums must contact the Coordinator once he arrives in branch so that payment can be adjusted.
- 5.7 The Locum may not close the Branch or affect Branch trading hours without consultation with the PS Team.



5.8 The Locum will inform the Owner if he was an employee of the Owner in the last 6 months, where this applies the Owner reserves the right to refuse to offer Bookings.

## 6. **OWNER'S OBLIGATIONS**

6.1 Nothing in the Locum Agreement shall oblige the Owner to offer any Bookings or number of Bookings to the Locum. There is no obligation on the Owner to offer Bookings to the Locum at any particular Branch.

6.2 The Owner agrees to provide a working environment which meets the professional standards required in order to comply with all legal and ethical requirements of the Regulatory Body.

## 7. **FEES AND PAYMENT**

7.1 The Owner will inform the Locum of any overpayment. The Locum agrees that the Owner may reclaim all monies due and owing to it from any Fees due.

7.2 The Locum shall not be entitled to receive any payments for days he is not engaged by the Owner.

7.3 The Owner assumes all Locums are travelling by their own private vehicle. If the Locum is travelling by public transport this should be mentioned when accepting the Booking including the form of public transport being used and also the approximate travel costs involved (if applicable). The Owner will also require confirmation that the use of public transport will not prevent the Locum covering the trading hours of the Branch.

7.4 All expenses must be agreed by the Owner prior to the Booking and all claims must be accompanied by appropriate receipts or other evidence of expenditure. The Owner reserves the right to refuse reimbursement of expense claims where the Locum has failed to obtain prior agreement and/or provide evidence of expenditure.

7.5 All expenses of the Locum must be wholly exclusively and properly incurred by him in providing the Services.

7.6 Subject to prior agreement, the Owner shall pay on receipt of a satisfactory invoice submitted by the Locum:

7.6.1 Mileage at the Owner's mileage rate after the first 40 miles have been deducted from the total mileage travelled (unless otherwise agreed).

7.6.2 Public Transport will be paid subject to reduction by a sum the equivalent of 40 miles at the Owner's mileage rate. Original VAT receipts or tickets must be submitted for all approved expenses other than mileage. Tickets and receipts must be attached to the appropriate invoice.

7.7 The Locum will provide the Owner with his correct bank account details and Fees will be paid by BACS to that account. It is the responsibility of the Locum to inform the Owner of any changes in his personal details. The Owner will not be liable for any delay in payment because of incorrect details provided by the Locum.

7.8 Any VAT claimed by the Locum will be processed separately from Fees. To claim VAT the Locum must submit a VAT only invoice on a headed invoice with the company name, trading address and the VAT number of the company. VAT invoices must be submitted on a monthly basis.

7.9 Fees should be claimed on a weekly basis and should not be allowed to accumulate for more than six weeks. Any payment queries should be made aware to the Owner within 30 days of receipt.

## 8. **CANCELLATIONS**

8.1 If the Locum is unable to undertake the Booking, he must give the Owner as much notice as possible. If the Locum gives less than 3 days notice of cancellation, the Owner reserves the right to charge for any additional costs incurred by the Owner as a result of such cancellation. The amount payable by the Locum under this clause 8.1 will not exceed £100.



8.2 If the Owner cancels a booking 3 days or less before its commencement and if no reasonable alternative work can be found by the Owner, the Owner will be liable to pay the Locum an amount equal to 50% of the Fee for the cancelled Booking.

## 9. **LIABILITY**

9.1 The Owner will not be liable for any clothing or personal property belonging to the Locum, except damage arising from proved negligence of the Owner where the Locum will be entitled to a compensation not exceeding the value of the items.

9.2 The Locum accepts that for the duration of a Booking he will not undertake any activities which are likely to have an adverse effect on the reputation of the Owner.

9.3 Nothing in this Locum Agreement shall exclude or limit the liability of the Locum for death or personal injury due to his negligence, or any liability which is due to the Locum's fraud or any other liability which is not permitted to exclude or limit as a matter of law.

## 10. **INDEMNITIES**

10.1 The Locum shall indemnify the Owner and keep it indemnified against any liability, loss, damage, costs (including legal costs on an indemnity basis) and expense of whatsoever nature incurred or suffered by the Owner arising from the Locum's performance or non-performance of the Services or breach of his obligations or warranties under this Agreement including, without limitation:

10.1.1 any income tax, national insurance contributions (including secondary contributions to the extent permitted by law) (including any interest, penalties or gross-up thereon) arising in respect of the Locum for which the Owner is called upon to account to the relevant taxing authority;

10.1.2 any act, neglect or default of the Locum and any claim that the Owner is vicariously liable for the Locum's act;

10.1.3 any liability for any employment related claim or any claim based on worker status brought by the Locum against the Owner arising out of or in connection with the provision of Services; and/or

10.1.4 any breach resulting in a successful claim by a third party.

## 11. **CONFIDENTIALITY**

11.1 It is acknowledged that to enable the Locum to provide the Services and to discharge his responsibilities under this Locum Agreement, the Owner will provide the Locum with information of a highly confidential nature which is or may be private, confidential or sensitive, being information or material which is the property of the Owner or which the Owner is obliged to hold confidential. The Locum agrees that he shall keep secret and confidential all Confidential Information and shall not at any time whether during the continuance of this agreement or after the termination of this Locum Agreement except with the express written consent of the Owner for any reason whatsoever disclose such information or permit it to be disclosed to any third party or otherwise use such information or permit it to be used.

11.2 The obligations of confidence set out in this clause shall not apply to Confidential Information which:

11.2.1 is or becomes publicly available through no fault of the Locum;

11.2.2 becomes part of the Locum's own knowledge or skill; and/or

11.2.3 is required to be disclosed by law.

11.3 For the purposes of this Clause, "**Confidential Information**" means:-

11.3.1 all information which relates to the business, finances, transactions, affairs, products, services, processes, equipment or activities of the Owner and which is designated by the Owner as confidential; and



11.3.2 all information relating to the matters set out in clause 12.3.1 which comes to the knowledge of the Locum in the course of the provision of the Services and which, by reason of its character and/or the manner of its coming to his knowledge, is evidently confidential; and

11.3.3 all information which relates to the business, finances, transactions, affairs, products, processes, equipment or activities of actual or potential clients, customers, suppliers or other persons which has been given to the Owner in confidence,

and shall include without limitation information as business plans, business methods, corporate plans, management systems, finances, maturing new business opportunities, research and development projects, concepts, ideas, new products, product formulae, source code, software, software designs, graphic designs, artwork, processes, inventions, discoveries or know-how, sales statistics, sales techniques, marketing surveys and plans, costs, profit or loss, prices and discount structures, the names, addresses and contact details of customers and suppliers or potential customers and suppliers.

11.4 The Locum agrees to adopt all such procedures as the Owner may reasonably require and to keep confidential all Confidential Information and that he shall not, (save as required by law) disclose the Confidential Information in whole or in part to any one and will agree not to disclose or use the Confidential Information other than in connection with the provision of the Services for the Owner.

11.5 Any document, including without limitation, notes, memoranda, diaries, correspondence, computer disks, facsimiles, reports or other documents or data of whatever nature or copies thereof created by the Locum in providing the Services shall be and remain the property of the Owner as appropriate and the Owner shall be the absolute beneficial owner of the copyright in any such document. Any such material must not be removed from the Owner's premises without prior written permission.

11.6 The Locum shall at any time during the continuance of this Agreement if so required by the Owner and in the event of the termination of this Agreement for whatever reason (whether lawfully or otherwise) surrender to the Owner all original and copy documents in his possession, custody or control (including, without limitation, all books, documents, papers, materials) belonging to the Owner or relating to the business of the Owner together with any other property belonging to the Owner.

11.7 The obligations under this Locum Agreement apply to all and any Confidential Information whether the Confidential Information was in or comes into the possession of the relevant person prior to or following this Locum Agreement and such obligations shall be continuing obligations throughout the continuance of this Agreement and at all times following its termination but shall cease to apply to information which may come into the public domain otherwise than through unauthorised disclosure by the Locum.

11.8 The Regulatory Body, Data Protection Act and Information Commissioner require that pharmacists take all reasonable steps to prevent accidental disclosure or unauthorised access to confidential information and ensure that confidential information is not disclosed without consent, apart from where permitted to do so by the law or in exceptional circumstances. Failure to adhere to these standards could form the basis of a complaint to a Regulatory Body, of fitness to practice.

## 12. **DATA PROTECTION**

12.1 The Locum consents to the Owner holding and processing Personal Data including Sensitive Data relating to his Locum Agreement with the Owner being held by the Owner in manual and electronic form and being used by the Owner for purposes relating to this Locum Agreement and/or the performance of the Services and the Locum consents to the use of any Personal Data for the purpose of the Owner contacting the Locum in respect of future vacancies. The Owner confirms that such data will be processed according to the Data Protection Act 1998.

12.2 The Owner shall hold personal information relating to individuals who are or have accepted the Owner's offer to provide locum pharmacy services in order to ensure that it is able to respond quickly to the requirements for locum pharmacists. The information held will be used for the purpose of maintaining an accurate database for contact and accounting purposes, to comply with the Owner's legislative responsibilities as outlined by the relevant authorities, such as HM Revenue and Customs and for the





purpose of reporting information to the Regulatory Body as required and to Disclosure Scotland in relation to the PVG Scheme. The Owner will process such data in accordance with the Data Protection Act 1998 and shall only use the data for the purposes shown above.

- 12.3 The Locum shall in relation to Personal Data ensure that he processes such Personal Data only to the extent reasonably necessary and for the purposes of providing the Services and in accordance with this Locum Agreement.
- 12.4 The Locum undertakes that he shall not knowingly do or omit to do anything that would cause the Owner or the Locum or any other person to be in breach of the Data Protection Act 1998 or order of the Information Commissioner or other competent authority with regard to the processing of Personal Data received or obtained in the course of providing the Services.
- 12.5 All rights, title and interest in the Personal Data transferred to or acquired by or on behalf of the Locum under this Locum Agreement shall vest and remain vested solely in the Owner.
- 12.6 The Locum acknowledges and accepts that unauthorised disclosure of Personal Data may be a criminal offence and that unauthorised disclosure of Sensitive Personal Data may result in claims for compensation from data subjects for distress and/or damage. Accordingly the Locum indemnifies and shall keep indemnified and shall hold the Owner harmless from all liability, loss, cost and expense (including reasonable legal fees and expenses) arising out of any claim of unauthorised disclosure that is caused by or attributable to the Locum acting (or failing to act) in breach of this Locum Agreement.
- 12.7 The Locum consents to the Owner making such information available to any companies who provide products or services to the Owner (such as advisers), regulatory authorities, governmental or quasi governmental organisations and potential purchasers of the Owner.
- 12.8 The Locum consents to the transfer of such information to the Owner's business contacts outside the European Economic Area in order to further its or their business interests.

### 13. **VARIATION**

Neither this Locum Agreement nor any of its terms or conditions can be varied or waived unless expressly agreed in writing and signed by all parties to this Locum Agreement.

### 14. **THIRD PARTY RIGHTS**

- 14.1 The Owner and the Locum agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Locum Agreement and no person other than the Owner and the Locum.

### 15. **GENERAL**

- 15.1 Nothing in this Locum Agreement or to be implied from the terms hereof shall restrict the right of the Locum to provide services of the same kind as are provided for herein for others outside the periods of time spent at the Pharmacy
- 15.2 In the event of the death of the Locum, the Owner shall remain liable for the Locum's payment of sums due in respect of duties or services which have already been performed. These will be payable to the estate.
- 15.3 The Locum Agreement shall be governed by and construed in accordance with the Laws of England and the parties hereby submit themselves to the exclusive jurisdiction of the Courts of England.



Signed for and on behalf of the Owner	
Print Name (BLOCK CAPITALS)	
Date	

Signed (Locum)	
Print Full Name (BLOCK CAPITALS)	
GPhC / PSNI Number	
Date	

Both copies to be returned to:

Operations Resource Planning Department  
Well  
Merchants Warehouse  
Castle Street  
Castlefield  
Manchester  
M3 4LZ

Fax: 0800 2799062

A signed copy will then be returned to you for your records.