**INDEPENDENT CONTRACTOR AGREEMENT FOR LOCUM PHARMACISTS**

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**THE PARTIES**

(1) ***[Insert Pharmacy entity’s name]***, trading as **[*Insert* *Pharmacy’s trading name*]** (the “Pharmacy")

**AND**

(2) ***[Insert locum name or entity name (if contracting with a corporate entity eg, a Locum provided by an Agency or a Locum operating through their own company]*** (the "Locum")

# BACKGROUND

## The Pharmacy needs to engage a Locum Pharmacist to cover special circumstances which may include (but is not limited to) the following:

### Bridging recruitment solutions;

### Cover for maternity leave, annual leave or other leave;

### Cover where an unplanned or unresolved recruitment issue has arisen.

## The parties agree that the Locum will provide pharmaceutical services to the Pharmacy on the terms set out in this contract.

## The services to be provided (“the Services”) are those as set out in Schedule B of this contract.

# TERM

## This contract will commence and terminate on the dates referred to in Schedule A to this contract unless terminated earlier in accordance with this contract (the “Term”).

## The parties may agree in writing to extend the Term or to enter into a new contract, but confirm that there is no expectation of any contractual relationship beyond the Term.

# Locum’s Representative

## The Locum will procure the services, and only the services, of the Key Person named in Schedule A (the “Locum’s Representative”) to provide the Services, and will ensure that the Locum’s Representative complies with the Locum’s obligations under this contract as if the Locum’s Representative were the Locum.

## The Locum will ensure that the Locum’s Representative provides the personal undertakings in Schedule C before the Locum commences providing the Services.

## To avoid doubt, the Locum’s Representative is not employed by, or in a contractual relationship (save for the personal undertakings) with, the Pharmacy.

# LOCUM’S general OBLIGATIONS

## The Locum will provide the Services set out in Schedule B and any related services incidental to those Services.

## The Locum will, in the performance of the Services:

### carry out the Locum’s obligations under this contract in a prompt, efficient and diligent manner consistent with good professional practices and standards, and use all reasonable care, attention and skill in the performance of those obligations;

### at all times be caring and sensitive to the needs of the Pharmacy’s customers and patients, and promote and protect the Pharmacy’s interests and reputation;

### comply with the Pharmacy’s reasonable and lawful directions;

### comply with the Health Information Privacy Code;

### comply with all proper requirements of the Pharmacy Council and any other regulatory or statutory body;

### be aware of and work within the applicable scope of practice under the Health Practitioners Competence Assurance Act 2003;

### comply with the New Zealand Pharmacy Council’s Code of Ethics and the New Zealand Pharmacy Council’s Standards and Guidelines;

### comply with any applicable industry standards or codes including any Standards from Standards New Zealand;

### comply with the Pharmacy’s policies, which may be varied, revoked, suspended or introduced by the Pharmacy from time to time, whether or not in writing;

### comply with the Pharmacy’s Health and Safety policies as per the Health and Safety At Work Act 2015;

### account for all patients and customers attended and other business carried out for the Pharmacy, and for all monies received or paid on the Pharmacy’s account;

### take all practicable steps in the provision of the Services to ensure the Locum’s own health and safety and the health and safety of the Pharmacy’s employees, contractors, patients and customers and other people in the Pharmacy;

### disclose to the Pharmacy any situation that may give rise to a conflict of interest as soon as the Locum becomes aware of that possibility;

### disclose to the Pharmacy any criminal convictions or criminal charges against the Locum;

### comply with all security requirements, including those relating to the security of drugs on the premises;

### maintain an appropriate standard of personal presentation at all times;

### hold and maintain a current New Zealand Drivers licence for the appropriate class of vehicle driven for the Pharmacy’s purposes, and carry this licence whenever driving.

# the Pharmacy’s general obligations

## The Pharmacy will:

### provide suitable facilities and reasonable administrative support to the Locum to assist the Locum in providing the Services;

### provide the Locum with a healthy and safe workplace; and

### advise the Locum of the Pharmacy’s policies and procedures, including procedures for making claims and payments.

# HOURS

## The Locum will provide the Services to the Pharmacy at the times and days specified in Schedule A.

## The Locum will be allowed reasonable rest and meal breaks.

# ON CALL ARRANGEMENTS

## The Locum may be required to be on call from time to time. Any on call requirement will be as described in Schedule A.

## When the Locum is on call, the Locum will be expected to be contactable by telephone or pager 24 hours per day. The Locum will also be expected while on call to be able to attend at the Pharmacy within the time of being contacted as specified in Schedule A.

## In an emergency, the Pharmacy may require the Locum to work, if the Locum is available, even though the Locum is not on call.

# Locum’s fee AND EXPENSES

## The Pharmacy will pay the Locum a fee in accordance with Schedule A.

## The Locum will invoice the Pharmacy for the Services and any expenses at the end of each calendar month. The Locum will provide legally compliant GST invoices when claiming fees and expenses.

## The Pharmacy will pay any invoices by direct credit into the Locum’s nominated bank account as provided in Schedule A.

## If the Locum is on call and required to attend work, the Locum will be paid the hourly fee (plus GST, if any) as specified in Schedule A.

## The Locum may be required to work outside the Locum’s usual hours of work due to a Pharmacy emergency. In the event that the Locum is not on call, but is required to attend the Pharmacy, the Locum will be paid the hourly rate (plus GST, if any) as specified in Schedule A.

## The Pharmacy will reimburse the Locum for any actual and reasonable expenses incurred by the Locum in performing the Services, provided that any expenses are approved in writing by the Pharmacy in advance on any such expense being entered into.

## Expenses will be claimed and paid in accordance with Schedule A.

## The Locum will not be entitled to any other payments from the Pharmacy. Without affecting the generality of this provision, the Locum acknowledges that there is no entitlement to payment from the Pharmacy for injury, sickness, superannuation, holidays, redundancy or overtime.

# TAX

## The Locum, as an independent contractor, is responsible for all personal taxes and other New Zealand applied levies (including income tax, GST and Accident Compensation Corporation levies) during the Term of this contract.

## For the avoidance of doubt, the contracting Pharmacy will not be liable for payment of the Locum’s personal IRD contribution, KiwiSaver, ACC levy or any other legislative employee contribution which may be introduced by the New Zealand government from time to time.

# Practising certificate, registration and complaints

## The Locum’s Representative will maintain the Locum Representative’s practising certificate and registration, and will advise the Pharmacy immediately if:

### either the registration or certificate ceases to be current or the certificate is suspended;

### the Locum’s Representative has been referred to a professional conduct committee or is the subject of a complaint to, or disciplinary proceedings or an investigation by, the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal;

### the Locum’s Representative is required to undertake a competency review by the Pharmacy Council; or

### the Locum’s Representative receives any complaint from any of the Pharmacy’s customers and patients.

# RELATIONSHIP OF PARTIES

## The Locum is engaged by the Pharmacy as an independent contractor and not as an employee, agent, partner or joint venturer.

## The Locum will not be entitled to, and cannot seek from the Pharmacy, any employment-related benefits including, but not limited to, annual holidays, public holidays, sick leave or bereavement leave, payments for superannuation and KiwiSaver, or redundancy, or any other benefits ordinarily applying to employees.

## The Locum will not provide the Services except as a Locum, and will advise customers and patients, service providers and suppliers of this status when providing the Services.

## If the Locum has any questions about the provision of the Services, the Locum should seek clarification from the Pharmacy owner.

# CONFIDENTIALITY

## The Health Information Privacy Code applies in the Pharmacy. All information arising from the operation of the Pharmacy, whether relating to the business, customers or patients, is confidential to the Pharmacy.

## The Locum must not, except in the proper performance of the Services, directly or indirectly use or disclose to any person or entity any confidential information belonging or relating to the Pharmacy, its employees, contractors, suppliers, customers or patients. The Locum will take all reasonable steps to prevent the improper use or disclosure of any confidential information.

## For the purposes of this contract, “confidential information” includes but is not limited to:

### any information not known generally outside the Pharmacy’s business that relates to any of the Pharmacy’s business affairs, finances, trade secrets, intellectual property, suppliers, employees, contractors, customers or patients; and

### the terms of this contract.

## This confidentiality clause will continue to apply after termination of this contract and regardless of any dispute.

# INTELLECTUAL PROPERTY

## Any intellectual property (including any copyright work) created during the course of the Locum’s provision of the Services will be the Pharmacy’s sole property, from the time that the intellectual property is created.

## The Locum waives all moral rights in any copyright work covered by this clause.

## The Locum assigns to the Pharmacy the Locum’s interests in all ideas and inventions made or conceived solely or jointly with others during the Term of this contract and arising out of the provision of Services which:

### relate to the Pharmacy’s business; or

### are made or conceived in the provision of the Services or with the use of the Pharmacy’s time, facilities or materials;

whether these ideas or inventions are patentable or not.

## Upon request, and at the Pharmacy’s cost, the Locum will do anything that the Pharmacy considers appropriate to vest these intellectual property rights in the Pharmacy. If the Locum fails to comply with a request within the timeframe specified by the Pharmacy, the Locum hereby appoints the Pharmacy as the Locum’s attorney to execute any documents on the Locum’s behalf.

## This intellectual property clause will continue to apply after termination of this contract and regardless of any dispute.

# return of property

## Immediately upon request, and in any event at the end of the Term (whether or not the Locum disputes the request), the Locum will promptly deliver to the Pharmacy any property or material that is in the Locum’s possession or control, and that belongs to or concerns the Pharmacy, the Pharmacy’s business affairs, suppliers, employees, contractors, customers or patients. This includes (but is not limited to) any keys, swipe cards, uniforms and the copies or originals of any documents that are business related or that contain any confidential information or the Pharmacy’s intellectual property.

## If the Locum fails to return the Pharmacy’s property as required, or if the property is not returned in a satisfactory condition, the Pharmacy may:

### take legal steps to recover the Pharmacy’s property from the Locum;

### deduct the replacement cost or current value of the property from any amount owing to the Locum;

### recover the replacement cost or current value of the property from the Locum; and

### require the Locum to pay the Pharmacy any costs that the Pharmacy incurs enforcing its rights under this clause.

## This property clause will continue to apply after termination of this contract and regardless of any dispute.

# liability and insurance

## The Locum accepts liability, and will reimburse the Pharmacy, for any loss, expense, damages or compensation which the Pharmacy incurs or is required to pay (including without limitation any legal fees or amount paid by way of settlement) in relation to any claim, which is threatened, notified or commenced against the Pharmacy and which:

### arises directly or indirectly out of any act or omission of the Locum in the course of the Services; and

### alleges a breach of any duty owed by the Pharmacy or Locum in contract or tort.

## The Locum will maintain professional liability insurance cover of at least $1 million to cover all professional liability claims arising out of any action or omission by the Locum in the course of providing the Services.

## The Locum will be open and honest with the Pharmacy and will cooperate fully in any investigation or legal proceedings that arise, whether in relation to the Locum’s provision of the Services, or any matter that occurred during the Term of this contract.

## This clause will continue to apply after termination of this contract, and regardless of any dispute.

# TERMINATION

## Either party may terminate this contract for any reason by giving the other party 4 weeks’ notice in writing of termination.

## The Pharmacy may terminate this contract with immediate effect by written notice if:

### the Locum breaches this contract, fails or is unable to perform the Services, or is negligent in the performance of the Services, and, if asked to rectify the situation, does not do so within any time-frame reasonably specified by the Pharmacy in writing;

### the Locum fails or is unable to provide the services of the Locum’s Representative;

### the Locum’s Representative ceases to be registered or to hold a current practising certificate, or has that certificate suspended; or

### the Locum’s Representative is the subject of an investigation or disciplinary proceedings by the Health and Disability Commissioner, the Health Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal that, in the Pharmacy’s reasonable opinion, concerns possible serious professional misconduct or presents a risk to the Pharmacy’s reputation, business, staff, customers or patients. The Pharmacy will consult the Locum before terminating this contract pursuant to this sub-clause.

# DISPUTE RESOLUTION

## The parties will try to resolve any dispute between themselves, in good faith.

## If resolution cannot be reached within fourteen days after the dispute has been notified by a party in writing, either party may give the other written notice requiring the parties to try and resolve the dispute at mediation. The parties will agree on a mediator or, if agreement cannot be reached within seven days after notice has been given, either party may refer the matter to the Arbitrators’ and Mediators’ Institute of New Zealand to appoint a mediator. Unless the parties agree otherwise, the mediation will take place within 21 days after a mediator has been appointed and the costs of the mediation, excluding the parties’ own legal and preparation costs, will be shared equally. The mediator will determine the process for mediation.

## If neither party refers the matter to mediation, or if the parties go to mediation but do not resolve their dispute, they may agree in writing to resolve their dispute by arbitration before a single arbitrator. In that event:

### the arbitrator will be appointed by agreement or, failing agreement within seven days after the parties have agreed to arbitration, by the Arbitrators’ and Mediators’ Institute of New Zealand;

### the costs of arbitration, excluding the parties’ own legal and preparation costs, will be shared equally, unless the arbitrator determines otherwise;

### the Second Schedule to the Arbitration Act 1996 will not apply; and

### the arbitrator will determine the procedure for the arbitration.

## The parties agree that the existence of any dispute between them and the information relating to any dispute will remain strictly confidential. To avoid doubt, this clause does not limit the parties’ ability (and in some instances obligation) to report issues of fitness or competence, or their ability to take professional advice.

# NOTICES

## All notices will be in writing to the Parties’ addresses as specified in Schedule A.

## Notice will be deemed to have been given and received:

### by delivery in person, when the person or entity nominated in Schedule A receives the notice;

### by registered post, when the notice is registered as having been received at the addresses specified in Schedule A; or

### by facsimile, when a valid transmission report confirms that the facsimile has been transmitted to the fax number provided in Schedule A.

# RELIGIOUS AND CULTURAL CONSIDERATIONS

## The Locum is required to disclose to the Pharmacy any religious, cultural or other convictions that do or may prevent the Locum from selling any pharmaceutical product eg, emergency contraceptive pills, or from otherwise reasonably providing the Services.

# PROHIBITION ON COMMUNICATING WITH THE MEDIA

## The Locum shall make no comments to the media concerning the operation of the Pharmacy or its employees, contractors, suppliers, patients or customers.

# force majEUre

## Neither party will be liable to the other for any failure to perform the party’s obligations under this contract by reason of circumstances beyond the party’s reasonable control, including (but not limited to) natural disaster, health epidemic or pandemic, governmental actions or war (“force majeure event”). The party affected must:

### notify the other party as soon as practicable after the force majeure event occurs, and provide information concerning the force majeure event, including an estimate of the time likely to be required to overcome it;

### take all reasonable steps to overcome the force majeure event and minimise the loss to the other party; and

### continue to perform that party’s obligations as far as practicable.

## Without limiting this clause, the Locum acknowledges that the Pharmacy will not be required to provide the Locum with work or pay the Locum’s fee where work is not available for the Locum due to a force majeure event.

# GOVERNING LAW

## This contract shall be governed by the laws of New Zealand.

# miscellaneous

## This contract contains the entire agreement of the parties. No variation, waiver, representation, assurance or other agreement will be effective or binding on either party, whether in contract, equity or otherwise, unless it is recorded in writing and signed by both parties.

## This contract is personal to the Locum and may not be assigned to any other party without the Pharmacy’s agreement in writing.

## **EXECUTION**

**SIGNED** for and on behalf of **THE PHARMACY** by

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## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Signature

## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Date

## **SIGNED** for and on behalf of **THE LOCUM** by

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## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Signature

## \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Date

# SCHEDULE A

|  |  |  |
| --- | --- | --- |
| Clause 2 – TERM | Start date | XXX |
| Clause 2 – TERM | End date | XXX |
|  | Location of contracting pharmacy | XXX |
| Clause 3.1 | Key person (Locum’s Representative) | XXX |
| Clause 5 - HOURS | Number of hours per day | XXX |
| Clause 5 - HOURS | Day per week | XXX |
| Clause 5 - HOURS | Usual hours of Pharmacy operation | XXX |
| Clause 6 | On call arrangements | XXX |
| Clause 6.2 | Attendance is required within the stated time frame | XXX |
| Clause 6.2 | Mobile phone number to be provided by Locum Pharmacist | XXX |
| Clause 7.1 | Fees to be paid per hour | $XXX |
| Clause 7.2 | Bank account number provided by Locum Pharmacist | XXX |
| Clause 7.3 | Fees to be paid for “on call” per hour | $ XXX |
| Clause 7.2 | Fees to be paid for work outside the Locum’s usual hours of work | $XXX |
| Clause 7.4 | Arrangements for payment of approved expenses | XXX |
| Clause 19.1 - NOTICES | Address for notices to the Pharmacy  XXX  Facsimile number for notices to the Pharmacy:  XXX | Address for notices to the Locum Pharmacist:  XXX  Facsimile number for notices to the Locum Pharmacist:  XXX |

# SCHEDULE B

**The Services**

[Insert Services to be provided]

# SCHEDULE C

**Personal undertakings by the Locum’s Representative**

In consideration for being granted access to the Pharmacy’s customers, patients, staff, suppliers, equipment, premises and confidential information, I personally agree to be bound by and comply with clauses 16 and 17 of this contract for Locum Services as if I were the “Locum”.

Signature

Name

Date