SOFTWARE AS A SERVICE SUBSCRIPTION

TERMS AND CONDITIONS

These Software as a Service Subscription terms and conditions apply in relation to any services provided by MYLOCUMMANAGER UK LTD a company incorporated and registered in England and Wales with Company Number 10319547 whose registered office is at 1 Tudor Road, Kingston upon Thames, KT2 6AS ("MyLocumManager") to you as a GP Surgery of GP Locum services (the "GP Surgery").

The following terms and conditions apply to your use of the MyLocumManager Web Platform which is owned and maintained by MyLocumManager, and the services available from the MyLocumManager Web Platform (together, the "MyLocumManager Service"). Please read these terms carefully. By using the MyLocumManager Web Platform and/or using the MyLocumManager Service you as the GP Surgery agree that you have read, understood and agreed to these Terms (each as amended from time to time). If you do not agree to these Terms you must not use the MyLocumManager Web Platform or use the MyLocumManager Service.

BACKGROUND:

(A)   MyLocumManager has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of facilitating GP Surgery's sourcing and engaging the services of GP Locums.

(B)   The GP Surgery wishes to use the MyLocumManager's service in its business operations.

(C)   MyLocumManager has agreed to provide and the GP Surgery has agreed to take and pay for the MyLocumManager's service subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1   **Definitions and interpretation**

1.1   In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"Agreement" means the Agreement between MyLocumManager and the GP Surgery comprising the terms and conditions set out in this document and any Engagement Details relating to a relevant Engagement.

"Business Day" means any day (other than Saturday or Sunday) on which clearing banks are open for business in London

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

"Data Protection Laws" means any laws and regulations relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/136/EC) and any legislation implementing or made pursuant to such directives, including (in the UK) the Data Protection Act 1998 (the "DPA") and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) from 25 May 2018, EU Regulation 2016/679 ("GDPR"); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; in each case, to the extent in force, and as such are updated, amended or replaced from time to time.

"DP Regulator" means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

"Engagement" means a Marketplace Engagement and "Engaged" and "Engage" shall be construed accordingly.

"Engagement Details" means any terms entered on the MyLocumManager Web Platform relevant to an Engagement or proposed Engagement and including the general requirements of a potential Vacancy posted by the GP Surgery on the MyLocumManager Web Platform, including start time, end time, type of work including the structure of the day (stating clearly if there are catch up slots for example and also rates of pay, if different, for non-patient facing time slots) and if there are any additional requirements including (without limitation), home visits, administrative tasks, follow ups, telephone consultations, prescriptions, number of patients to be seen in the time, location, travel information to the practice, fee rate, and health and safety details and whether and on what basis employers' pensions contributions will be paid to the Healthcare Professional in respect of the Engagement (provided that the GP Locum does not contract through a PSC).

"GP Locum" means the individual named in the relevant Engagement Details relating to the relevant Engagement.

"GP Locum Services" means the services to be performed by a GP Locum in relation to an Engagement.

"GP Surgery's Group" means the GP Surgery, any body corporate of which the GP Surgery is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the GP Surgery.

"Introduction" means the GP Surgery directly or indirectly receiving, viewing or having access to any Marketplace information via the MyLocumManager Web Platform which identifies or relates to a person who may act as a GP Locum. The date of Introduction shall be the date that the GP Surgery obtains any such information. "Introduces" and "Introduced" shall have the corresponding meanings.

"Late Payment Charge" has the meaning set out in clause 5.6.

"Loss" means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and costs incurred as a result of defending or settling any claims).

"Marketplace" means the GP Locum's who have, independently of the GP Surgery, registered with the MyLocumManager Web Platform, or who have otherwise had their details added to the MyLocumManager Web Platform by someone other than the GP Surgery.

"Marketplace Engagement" means the GP Surgery's engagement of a GP Locum, who has introduced him/herself to the GP Surgery via the Marketplace, on the terms set out in the GP Locum Agreement.

"MyLocumManager Web Platform" means www.mylocummanager.com

"MyLocumManager Service" has the meaning set out at the head of this Agreement.

"Subscription Fees" means the fee payable for the MyLocumManager Subscription Service, as outlined in Schedule 1 attached.

"Subscription Service" means where a GP Surgery subscribes to using the MyLocumManager Service for a set period of time to find and engage a certain number of hours of Healthcare Professional Services (the set period of time and number of hours of Healthcare Professional Services to be agreed with the GP Surgery in a Subscription Service Schedule) via the Marketplace.

"Timesheet" means a record posted on the relevant part of the MyLocumManager Web Platform, or such other system as is used to record the time and attendance details of Healthcare Professionals on Engagements, from which electronic timesheets are generated.

"User" means a GP Surgery or a GP Locum.

"Vacancy" means the specific details of a potential vacancy at the GP Surgery (in respect of which the GP Surgery has issued a Vacancy Notification). "Vacancies" shall be construed accordingly.

"Vacancy Notification" means a notification by the GP Surgery to the GP Locum through the MyLocumManager Web Platform of a vacancy to perform the GP Locum Services in accordance with Engagement Details and the terms and conditions set out in this document.

"Virus" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of MyLocumManager Web Platform; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after the date of this Agreement) under it from time to time.

1.3 Where the context permits, words denoting:

(a) persons shall include bodies corporate and unincorporated associations of persons;

(b) the singular include the plural and vice versa; and

(c) one gender shall include any gender.

2 MyLocumManager's obligations

2.1 MyLocumManager shall (subject to availability) provide systems:

(a) which may facilitate the Introduction of a GP Locum; and

(b) via which the GP Surgery can maintain, access and send Vacancy Notifications.

2.2 MyLocumManager:

(a) does not warrant that the User's use of the MyLocumManager Web Platform will be uninterrupted or error-free; or that the MyLocumManager Web Platform, Documentation and/or the information obtained by the User through MyLocumManager Web Platform will meet the User's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the User acknowledges that the MyLocumManager Web Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3 The GP Surgery's obligations

3.1 The GP Surgery agrees that by submitting a Vacancy Notification on the MyLocumManager Web Platform the GP Surgery has given MyLocumManager authority to provide a system under which the GP Surgery may try to find a GP Locum for that Vacancy.

3.2 The GP Surgery warrants, represents and undertakes that:

(a) when submitting a Vacancy Notification or other records or details relating to an Engagement it will not breach or directly or indirectly cause MyLocumManager to breach any antidiscrimination laws or provide any information or make any requests that may bring MyLocumManager into disrepute;

(b) it will not block a GP Locum from work with the GP Surgery for any reason that is of an unlawfully discriminatory nature, or that may bring MyLocumManager into disrepute;

(c) all information provided by the GP Surgery in the form of Engagement Details or otherwise for the purposes of the Engagement will be true and accurate and up to date;

(d) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement; and

(e) not access, store, distribute or transmit any Viruses, or any material during the course of its use of MyLocumManager Web Platform.

3.3 The GP Surgery agrees that it shall give to MyLocumManager in the Engagement Details and/or otherwise as requested by MyLocumManager information confirming:

(a) the identity of the GP Surgery;

(b) the date on which the GP Surgery requires provision of the GP Locum Services to commence and the duration or likely duration of provision of the GP Locum Services;

(c) in the case of a Marketplace Engagement, the experience, training, qualifications and any authorisations which the GP Surgery considers are necessary, or which are required by law or by any professional body, in particular the General Medical Council and the Care Quality Commission for the GP Locum to possess in order to provide the GP Locum Services. For the avoidance of doubt MyLocumManager will not carry out checks in relation to these and it is agreed that (unless specifically agreed otherwise with MyLocumManager in writing) responsibility for such checks will rest with the GP Surgery; and

(d) that they are a genuine GP Surgery being a GP surgery who supplies medical services and who does not on-supply such services to any third party such as a locum agency (whether as acting as an employment agency or employment business or otherwise).

3.4 The GP Surgery shall:

(a) carry out risk assessments of the GP Locum Services to be undertaken and notify the GP Locum and immediately of any specific or potential hazards relating to the Engagement and any precautions the GP Locum should take in relation to such risks;

(b) not allow the GP Locum to undertake any work that is hazardous without first undertaking a risk assessment and notifying the GP Locum of any risks identified;

(c) if applicable, make clear to the GP Locum what rules (including but not limited to health and safety, site and security policies, procedures and regulations) apply in respect of the location(s);

(d) ensure that any and all equipment, and protective clothing are in good order and are suitable, safe and comply with all relevant health & safety legislation;

(e) check and sign or electronically verify timesheets Timesheet (in a form approved by MyLocumManager) verifying the number of hours worked by the GP Locum which shall

be deemed to be confirmation of satisfactory performance of the Healthcare Professional Services by the GP Locum unless the GP Surgery expressly notifies MyLocumManager otherwise in writing;

(f) notify MyLocumManager immediately if it is dissatisfied with the performance by the Healthcare Professional of the GP Locum Services; and

(g) (without limitation to the above) not commit any act or omission constituting unlawful discrimination against or harassment of any GP Locum in connection with the performance of the GP Locum Services.

3.5 Nothing in this clause3 shall limit MyLocumManager's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under an indemnity.

4 Vacancy-filling Process

4.1 Subject to the terms of this Agreement, the GP Surgery may use the MyLocumManager Web Platform to issue Vacancy Notifications and Timesheets.

4.2 MyLocumManager shall operate the MyLocumManager Service so that GP Locum's are able to apply for Vacancies that the GP Locum's state they are qualified to perform.

4.3 A contract relating to an Engagement will be deemed to have been entered into between the GP Surgery and the GP when a GP Locum offers via the MyLocumManager Web Platform to undertake the relevant Engagement and the GP Surgery accepts such offer via the MyLocumManager Web Platform.

5 Payment of Subscription Fee

5.1 The GP Surgery shall pay the Subscription Fees to the Supplier for the use of MyLocumManager Web Platform in accordance with this clause 5 and Schedule 1 attached.

5.2 If MyLocumManager has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of MyLocumManager:

(a) may, without liability to the GP Surgery, disable the GP Surgery's password, account and access to all or part of the MyLocumManager Web Platform and MyLocumManager shall be under no obligation to provide any or all of MyLocumManager Web Platform while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

5.3 All amounts and fees stated or referred to in this Agreement:

(a) shall be payable in pounds sterling;

(b) are exclusive of value added tax, which shall be added to MyLocumManager's invoice(s) at the appropriate rate.

5.4 MyLocumManager shall be entitled to increase the Subscription Fees upon 30 days' prior written notice to the GP Surgery.

6 Term and Termination

6.1 If the GP Surgery agrees to use the MyLocumManager Service, the MyLocumManager Service shall commence on the date they are initially purchased (as evidenced by such systems as

MyLocumManager may from time to time have for taking up the MyLocumManager Service) and shall continue in force on a rolling monthly and continue until terminated in accordance with clause 6.2 below.

6.2 This Agreement shall continue unless terminated:

(a) by written notice with immediate effect by MyLocumManager if there is any breach of this Agreement by the GP Surgery; or

(b) by 5 Business Days' written notice by MyLocumManager if there is any other serious or repeated breach of this Agreement by the GP Surgery, which is, in the reasonable opinion of MyLocumManager, capable of remedy and which is not remedied within 10 Business Days after an earlier notice requiring it to do so; or

(c) by written notice with immediate effect by MyLocumManager and without liability for MyLocumManager or prejudice to any right for relief MyLocumManager may have if in good faith MyLocumManager considers for any reason that (i) the GP Surgery may not meet its obligations to MyLocumManager, or (ii) the GP Locum may no longer be willing, or able or suitable to undertake the GP Locum Services for the GP Surgery; or

(d) by written notice with immediate effect by either party for convenience.

7 Acknowledgements and Liability

7.1 The GP Surgery acknowledges that MyLocumManager does not supervise and/or control the actions of any GP Locum. Nothing in this Agreement shall in any way constitute any GP Locum as the employee or worker of MyLocumManager. MyLocumManager shall not be responsible for supervising, monitoring or directing the GP Locum whilst working on an Engagement and that accordingly, only the GP Surgery is in a position to assess and insure against risks in respect of or during or arising out of the period for which the GP Locum is performing the GP Locum Services.

7.2 The GP Surgery understands that MyLocumManager does not conduct checks on its users or otherwise inquire into the background of the GP Locums.

7.3 MyLocumManager are not involved in the actual transactions between users. As most of the content on Gumtree comes from other users, we do not guarantee the accuracy of postings or user communications or the quality, safety, or legality of what's offered.

7.4 The GP Surgery acknowledges that MyLocumManager is not an employment agency for the purposes of the Conduct Regulations and is instead a medium through which GP Locum's find Engagements for themselves and GP Surgery's find GP Locums to work on Engagements.

7.5 The GP Surgery acknowledges that there is no contract between MyLocumManager and a Healthcare Professional relating to the GP Locum Services. MyLocumManager shall not be responsible for and shall have no involvement in any disputes between the GP Surgery and a Healthcare Professional and shall not be responsible for the quality of the GP Locum Services provided by the GP Locum or their activities while at the GP Surgery's location(s). The Subscription Fee reflects only those online services agreed to be supplied by MyLocumManager and do not indicate acceptance of any liability for the GP Locum's acts or omissions.

7.6 MyLocumManager shall not be responsible for ensuring the suitability of any GP Locum.

7.7 The GP Surgery shall comply with Schedule 3 attached in relation to its usage of the MyLocumManager Web Platform.

7.8 Subject to clause 7.11 below, MyLocumManager shall not be liable for any Losses arising from:

(a) any failure to provide the services of the GP Locum for all or part of the term of this Agreement;

(b) the negligent, wrongful, dishonest or fraudulent acts or omissions or misrepresentations of the GP Locum , including, without limitation, any lack of skill of any GP Locum; or

(c) the theft, destruction, deletion or damage of or to any data, computer systems or materials by any GP Locum.

7.9 MyLocumManager shall not be liable for any Losses arising out of:

(a) any act or omission or misrepresentation (whether before or after the date of this Agreement) of any GP Locum;

(b) any special, indirect or consequential damages or loss; or

(c) any loss of profit, business, revenue, goodwill, anticipated savings and/or any claims made under third party contracts, arising out of any failure by MyLocumManager to perform any obligations under this Agreement.

7.10 Subject to clause 7.11 below and without prejudice to the other provisions of this clause 7, MyLocumManager's liability in respect of any breach of this Agreement shall not exceed in respect of any GP Locum or Introduction a sum equivalent to total Fees paid for use of the MyLocumManager Web Platform and MyLocumManager Service during the 12 months immediately preceding the date on which the claim arose.

7.11 Nothing in this Agreement shall operate to exclude or limit MyLocumManager's liability for:

(a) death or personal injury caused by MyLocumManager's negligence;

(b) its own fraudulent acts or omissions; or

(c) any other liability which cannot by law be excluded.

7.12 The GP Surgery shall indemnify and keep indemnified MyLocumManager against any Losses incurred by MyLocumManager arising out of any breach of this Agreement by the GP Surgery.

8   Data Protection

8.1 The terms "Data Subject", "Personal Data" and "processing" shall have the meanings set out in Data Protection Laws.

8.2 The parties acknowledge that, for the purposes of the Data Protection Laws, each party shall be considered to be a Data Controller with respect to Personal Data processed in connection with the Marketplace.

8.3 The parties shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement. and not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Party or as expressly provided for in this Agreement.

8.4 Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

8.5 If either party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other party and it shall provide the other party with commercially reasonable co-operation and assistance in relation to any such complaint, notice or communication or personal data breach.

8.6 The parties shall co-operate and assist each other in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws.

8.7 The GP Surgery shall act as the Data Controller and MyLocumManager shall act as the Data Processor in respect of the Personal Data relating to a GP Locum supplied to MyLocumManager through the MyLocumManager Web Platform.

8.8 The provisions of Schedule 2 attached shall apply equivalently to any GP Surgery Personal Data obtained by MyLocumManager to the extent applicable.

9 Force Majeure

9.1 MyLocumManager shall have no liability to Users under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the User is notified of such an event and its expected duration.

10 General

10.1 This Agreement, including (for the avoidance of doubt) the Schedules attached shall form the entire Agreement between the parties and supersedes all previous Agreements and arrangement(if any) whether written, oral or implied between the parties relating to such matters contemplated by this Agreement, and all such Agreement still effective at the date of this Agreement (if any) shall be deemed to have been terminated by mutual consent but without prejudice to any rights which have arisen prior to such termination and so that nothing in this clause 10.1 shall operate to exclude or limit the liability of any party in respect of fraud.

10.2 The GP Surgery acknowledges that, in entering into this Agreement, it has not relied on any representations by MyLocumManager made before the execution of this Agreement other than those expressly set out in this Agreement.

10.3 This Agreement is personal to the GP Surgery and the GP Surgery shall not be entitled to assign or subcontract its obligations or rights under this Agreement to any third party without the prior written consent of MyLocumManager. MyLocumManager shall however be entitled to assign this Agreement and, upon such Engagement, without prejudice to the assignor's rights in respect of matters arising prior to such Engagement, and all references to MyLocumManager shall be deemed to refer to the assignee.

10.4 No amendment to this Agreement is effective unless it is in writing and signed on behalf of each party by a person duly authorised by that party. For the avoidance of doubt, Agreement to an amendment notified to the other party on the MyLocumManager Web Platform will constitute 'in writing' for these purposes and if the other party e-signs the amendment, this will constitute 'and signed' for these purposes.

10.5 Any notice required to be given under this Agreement (including the delivery of any timesheet, Timesheet entries or invoice) shall be given in such manner as is expressly provided for on the MyLocumManager Web Platform or (where not so provided for) shall be given in writing signed by a person duly authorised by the sending party and delivered by hand, e-mail or prepaid first class post to the recipient at its address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).

10.6 If any provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:

(a) such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected; and

(b) to the extent permitted by law, MyLocumManager and the GP Surgery shall negotiate in good faith a replacement to any provision severed under clause 10.6(a) by a provision which is of similar effect but which is not illegal or unenforceable.

10.7 None of the provisions of this Agreement is intended to be for the benefit of, or enforceable by, third parties (other than permitted assignees of MyLocumManager who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is (aside from such permitted assignees) excluded.

10.8 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

11 Governing Law

11.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

12 Jurisdiction

12.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Subscription Fees

1.1   [INSERT DETAILS]

Schedule 2

Data Protection [INSERT PRIVACY POLICY]

Schedule 3

[INSERT WEBSITE TERMS AND CONDITIONS]