**Enabling staff movement**

**Annex E: Workforce sharing agreement template**

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| --- |
| **(1) [NHS Organisation 1]**  **-and-**  **(2) [NHS Organisation 2]**  **WORKFORCE SHARING AGREEMENT TEMPLATE** |

**THIS AGREEMENT** is made on [DATE]

**BETWEEN**

1. **[Name of NHS Organisation 1]** of **[Address or NHS Organisation 1]** (“[**Party A**]”);
2. **[Name of NHS Organisation 2]** of **[Address or NHS Organisation 2]** (“[**Party B**]”),

hereinafter referred to individually as “**the Party**” or collectively as “**the Parties**”.

**RECITALS**

1. The Parties wish to collaborate in a mutually supportive way for the benefit of their organisations, their patients, staff and the wider public in delivering health services as set out in Schedule 1 or as otherwise agreed between the Parties from time to time (the **“Services”**).
2. This Agreement is intended to serve as an overarching agreement between the Parties to enable the mobility of the Parties’ workforces in furtherance of the above objective and, where relevant, to enable the Parties to meet clinical objectives as set by the individual Party Boards.
3. The Parties have agreed to provide members of staff (the **“Staff Members”**) to each other from time to time for the purpose of delivering the Services.
4. This Agreement refers to Staff Members who are employed by one Party (the **“Employing Party”**) but are provided to work for another Party (the **“Receiving Party”**).
5. The Parties have agreed that the Staff Members may be deployed from time to time to work with the Receiving Party on a full time or part time basis and work such hours as agreed by the relevant Parties and provided the Parties comply with the Working Time Regulations 1998.
6. The Staff Members who are provided under this Agreement shall be required to carry out activities necessary to support the delivery of the Services.
7. [This Agreement and the Schedules shall apply to NHS services provided by the Parties only and shall not apply to private healthcare services provided by employees, workers or contractors of the Parties including but not limited to work through private agencies or at private hospitals. For the avoidance of doubt, this Agreement shall apply where NHS services are provided at a private establishment by Staff Members.]

**OPERATIVE PART**

# INTERPRETATION

# The following definitions and rules of interpretation apply in this agreement.

# Definitions:

|  |  |
| --- | --- |
| Business Day: | 1. means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business; |
| Confidential Information: | 1. means information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business affairs and finances of the Parties for the time being confidential to the Parties, whether or not such information (if in anything other than oral form) is marked confidential; |
| Controller: | 1. has the meaning set out in the Data Protection Laws; |
| Data Protection Laws: | 1. means all applicable data protection and privacy laws in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (**DPA 2018**); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and the guidance and codes of practice issued by the Information Commissioner and which are applicable to a Party; |
| FOIA: | 1. means the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner; |
| **Indirect Losses:** | means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis; |
| Losses: | means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, for the avoidance of doubt, excluding Indirect Losses; |
| **NHSR Indemnity: Scheme:** | means any indemnity scheme operated by NHS Resolution including:   * The Clinical Negligence Scheme for Trusts which applies where healthcare professionals are working under a contract of employment and the negligence occurs in the course of the employment or where the individual owes a duty of care to the person injured. For the avoidance of doubt, services provided at the Receiving Party shall be in the course of employment of Staff Members who are employees of the Employing Party; * The Liabilities to Third Parties Scheme; and * The Property Expenses Scheme; |
| **Personal Data:** | has the meaning set out in the Data Protection Laws; |
| **Premises:** | means any sites from which the relevant Receiving Party operates from time to time; |
| **Staff Members:** | means anyone (including doctors) employed by the Employing Party under an employment contract. For the avoidance of doubt, this excludes agency workers, bank workers, volunteers and contractors; |
| **TUPE:** | means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended from time to time; |
| **UK GDPR:** | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018. |

# COMMENCEMENT AND EFFECTIVE DATE

# This Agreement shall have legal effect from the date on which the Parties execute this Agreement ("Effective Date") and shall continue until and unless terminated in accordance with clause 11 (Termination).

# PROVISION OF STAFF MEMBERS

# A Staff Member employed by the Employing Party may from time to time be required to work for the Receiving Party, subject to the terms of this Agreement. The Parties agree that the Staff Member shall remain an employee of their employer (the Employing Party) at all times and nothing in this Agreement creates (or is intended to create) an additional employment or other relationship between the Staff Member and the Receiving Party and the Staff Member shall not be entitled to receive any salary, pension, bonus or other payments or benefits from the Receiving Party.

# The Employing Party will, through relevant line managers, liaise with the Receiving Party and agree any practical arrangements necessary to implement the deployment of the relevant Staff Member to the Receiving Party (including arrangements for uniform, ID Badges, travel expenses, car parking, IT and clinical system access).

# In advance of the attendance by any Staff Member on a Receiving Party’s premises and on behalf of the Receiving Party, the Employing Party warrants that they shall in relation to each relevant Staff Member who is current or new to the Employing Party, include as a term in each Staff Member’s contract of employment the wording set out at Schedule 2 regarding mobility and procure their agreement to abide by the terms of the Licence to Attend in the same form at Schedule 2.

# The Parties agrees that attendance by a Staff Member at a Receiving Party’s premises is conditional on the Staff Member’s agreement to the terms of the Licence to Attend at Schedule 2 and that execution of this Agreement constitutes agreement to the terms set out in the Licence to Attend at Schedule 2, subject to the Receiving Party’s right to refuse entry onto its Premises of any Staff Member, such refusal to be reasonable in all the circumstances.

# Where Staff Members are provided by an Employing Party to a Receiving Party under the terms of this Agreement, the Employing Party shall be responsible for maintaining a list of Staff Members which it has deployed to the Receiving Party and keep this list up to date.

# Where Staff Members are provided to the Receiving Party under the terms of this Agreement, the Employing Party warrants that each Staff Member has:

# passed any necessary mandatory checks (including that the Staff Member has met the NHS Employment Check Standards issued under Health Circular HSC 2002/008 (as revised from time to time) at the time of recruitment and on an ongoing basis as required (appropriate steps having been taken by the Employing Party to update relevant checks where necessary);

# where eligible, undergone a standard/enhanced disclosure and barring service check (or any successor equivalent) on appointment in respect of which no material matters were raised;

# the relevant qualifications, experience and professional registration in accordance with good industry practice to undertake the work required of them;

# no restrictions on their practice (where applicable);

# a legal right to work in the UK and to carry out the required work for the Receiving Party and that the Employing Party has documentary evidence proving the right to work and has complied with all of its legal obligations in this regard;

# completed such mandatory training within the previous year so as to enable the Staff Member to carry out their role safely (and that the Staff Member will be able to continue to access the Employing Party’s mandatory training programme); and

# where appropriate due to existing health conditions, occupational health or other relevant medical advice confirming that the individual is fit to undertake the duties required of them.

# Where a Staff Member requires reasonable adjustments or has restrictions on their practice, the Employing Party shall give the Receiving Party reasonable notice of the same so as to enable a decision to be taken as to whether it is feasible that the Staff Member is provided to the Receiving Party including whether any adjustments which are required are reasonable, subject to any legal obligation not to do so including but not limited to the Data Protection Laws.

# Should, following the provision of a Staff Member by the Employing Party, any change(s) occur to any checks or any circumstances arise which leads the Employing Party to reasonably conclude that any Staff Member provided to the Receiving Party is not safe to practice or has the right to work in the UK, the Employing Party shall notify the Receiving Party of this as soon as is practicable.

# LIABILITY AND INSURANCE

# Without prejudice to its liability for breach of any of its obligations under this Agreement and subject to clauses 5.3, 5.4 and 5.5 below, each Employing Party and Receiving Party shall remain liable to each other, and shall indemnify each other and keep each other indemnified against any Losses including without limitation in respect of:

# any loss of or damage to property (whether real or personal); and

# any injury to any person, including injury resulting in death;

## that result from or arise out of the relevant Party’s negligence or breach of contract in connection with the performance of this Agreement including without limitation clinical negligence where such Losses are not recoverable pursuant to the relevant NHSR Indemnity Scheme and including breach of contract by the relevant Party and/or its staff, employees, agents or directors except where Losses have been caused by the other relevant Party or its staff, employees, agents or directors.

# During the term of this Agreement and for a period of 21 years thereafter each Party shall as a Receiving Party at their own cost and in compliance with good industry practice procure and maintain in force appropriate insurance or take up membership of a relevant NHSR Indemnity Scheme to cover Staff Members and the Services received as a Receiving Party within the scope of this Agreement. Such insurance shall be adequate to cover any loss, injury and damage caused by or to the Staff Members in the course of providing the Services under this Agreement.

# Each Party shall on the other Party’s request, provide documentary evidence of the fact that the appropriate insurance referred to in clause 4.2 is in place.

# INDEMNITIES AND WARRANTY

# The Receiving Party hereby represents and warrants as follows:

# it complies and shall continue to comply with all relevant health and safety legislation applicable to the protection of its own staff and service users, together with Staff Members on its Premises and/or under its direction or care; and

# it shall provide a safety induction relevant to its organisation to the Staff Members including but not limited to fire evacuation procedures and local environment induction;

# it shall provide appropriate training and shadowing to prepare the Staff Members for the duties they are asked to undertake including a job essential induction, providing the information necessary to allow the Staff Members to provide the Services, including but not limited to location of supplies and equipment, access to care plans, name of supervisor, details of relevant policies;

# it shall provide the Staff Members with adequate personal protective equipment to practise safely in the environment they are working.

# It is not intended that TUPE will apply to the arrangements provided for in this Agreement, and it is understood and agreed by the Parties that TUPE does not apply. It is intended that the Staff Members shall remain employed by their employer as at the date of this Agreement.

# The Receiving Party shall be responsible for the day-to-day direction and supervision of the Staff Member and the Staff Member’s conduct and actions during the period of time that the Staff Member may be provided to the Receiving Party (the “Sharing Period”).

# Without prejudice to clause 5.2 above and subject to clause 5.5 below, the Employing Party shall have sole liability for any Losses suffered or incurred by the Receiving Party or any third party arising out of or in connection with the employment or termination of employment of the Staff Member or acts or omissions of the Staff Member, including any negligent or reckless act or omission, save for where such Losses arise from acts or omissions of the Receiving Party or any of its directors, officers or employees, or where the acts or omissions of the Staff Member are at the direction of the Receiving Party or any of its directors, officers or employees during the Sharing Period. The Employing Party shall indemnify the Receiving Party and keep the Receiving Party indemnified against any and all Losses suffered or incurred by the Receiving Party or by any third party arising out of or in connection with the employment or termination of employment of the Staff Member or acts or omissions of any Staff Member of whatever kind, save for where such Losses arise from acts or omissions of the Receiving Party or any of its directors, officers or employees, or where the acts or omissions of the Staff Member are at the direction of the Receiving Party or any of its directors, officers or employees during the Sharing Period.

# The Receiving Party shall have sole liability for any Losses suffered or incurred by the Employing Party or any third party arising out of or in connection with the acts or omissions of the Receiving Party or any of its directors, officers or employees pursuant to the terms of this Agreement, including any negligent or reckless act or omission and arising out of or in connection with any clinical negligence or other claims which arise out of or in connection with the Staff Member working for the Receiving Party during the Sharing Period, or to situational or environmental issues at the Receiving Party. The Receiving Party shall indemnify the Employing Party and keep the Employing Party indemnified against any and all Losses suffered or incurred by the Employing Party or by any third party arising out of or in connection with the acts or omissions of the Receiving Party or any of its directors, officers or employees of whatever kind, including any negligent or reckless act or omission and arising out of or in connection with any clinical negligence or other claims which arise out of or in connection with the Staff Member working for the Receiving Party during the Sharing Period, or to situational or environmental issues at the Receiving Party.

# If an Employing Party or Receiving Party becomes aware of any matter that may give rise to a claim or complaint against the other relevant Party or any of its directors, officers, employees, workers or contractors, notice of that fact shall be given as soon as possible to the other relevant Party.

# Each Party shall, at its own expense, provide any other Party with such reasonable assistance as that Party may reasonably require to contest any claim, complaint or allegation resulting from or in connection with arrangements pursuant to this Agreement, subject always to a Party's obligations under the UK GDPR.

# PAYMENTS

# The Employing Party shall at all times be responsible for all payments in respect of salary, supplements, allowances, expenses, pension contributions and other benefits to the Staff Members and all income tax liability and National Insurance or similar contributions in respect of any payment to the Staff Members.

# The Receiving Party will be responsible for providing the Employing Party with all relevant management information to enable the Employing Party to pay the Staff Members correctly and complete necessary returns (e.g. sickness, other absence, supplements and allowances, reportable incidents/accidents). This information shall be provided to the Employing Party as soon as reasonably possible.

# The Parties agree that [insert detail regarding fees].

# EMPLOYEE ISSUES

# All employee relations matters including grievance, discipline, leave, sickness, performance (and for doctors Maintaining High Professional Standards or equivalent procedures) relating to Staff Members shall be dealt with under the Employing Party’s policies and procedures. The Employing Party and Receiving Party shall cooperate at all times with any such processes including in ensuring the timely provision of information sought and securing the involvement and attendance of witnesses in investigations and internal meetings and hearings. However, save where agreed otherwise, the Parties agree that in respect of protected disclosures under the Employment Rights Act 1996 and requests for Personal Data under the Data Protection Laws the organisation where the alleged behaviour took place or where the Staff Member was working at the relevant time is responsible for investigating, progressing and/or resolving those matters. The Employing Party and Receiving Party shall cooperate at all times, as required, to allow for adequate responses to be issued to any such protected disclosures and requests for Personal Data.

# Freedom of information

# Each Party shall comply with its obligations under FOIA in relation to this Agreement. Where a Party receives a request for information under FOIA which relates to this Agreement or information shared further to it, it shall notify the other Party of that request and the information which it considers is relevant to the response. The Party that received the request shall take account of any representations given by the other Party as to the response, but the Parties acknowledge that ultimately it is for the Party that received the request to reasonably determine what response should be given.

# DATA Protection

# Each Party shall comply with all applicable requirements of the Data Protection Laws. The Parties acknowledge their respective duties under the Data Protection Laws and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. This clause (Data Protection) is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Laws.

# The Parties shall be:

# joint Controllers in relation to any joint decision making/processes and jointly responsible for all the data they collect and share between themselves for those purposes; and

# independent Controllers in respect of any other data shared under this Agreement, and in particular any data held solely on the system of one Party or any data processed for the employment law obligations of one Party.

# The Parties agree the form of privacy notice for Staff Members appended to the Licence to Attend at Schedule 2 (which they may update from time to time by agreement) and shall each ensure that they inform Staff Members about any additional processing they undertake in accordance with their responsibilities under the Data Protection Laws.

# The Parties agree to abide by the data sharing principles set out in Schedule 3 to this Agreement.

# Compliance with laws and policies

# Each Party shall comply with all laws and regulations relating to its activities under this Agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

# duration AND TERMINATION

# This Agreement shall be effective from the Effective Date and shall continue in force until the Parties mutually agree in writing to terminate this Agreement for any reason. This is subject to:

# A Party (Party A) being asked to exit the Agreement by the other Party (Party B) on written notice if Party A: (a) breaches the Agreement and fails to remedy the breach (if remediable) within 30 days of being notified by Party B of the breach and requesting its remedy; or (b) commits an irremediable breach.

# Any Party having a right to withdraw from the Agreement on [insert period of agreed notice (e.g. 6 months)] months’ written notice to the other Party.

# **CONFIDENTIALITY**

# Each Party agrees to keep confidential and not use or disclose any Confidential Information of another Party which may come to its possession or knowledge.

# The Parties hereby undertake to each other to make all Staff Members, officers, employees, workers, agents, volunteers, advisers and contractors aware of the confidential nature of the Confidential Information and the provisions of this clause and, without limitation to this clause, to take all such steps as shall from time to time be necessary to ensure compliance by the Staff Members and officers, employees, workers, agents, volunteers, advisers and contractors with the provisions of this clause.

# The provisions of this clause shall not apply to information which has come into the public domain otherwise than through unauthorised disclosure or so as to prevent disclosure of Confidential Information where and to the extent that such disclosure is required to be made:

# by Law;

# by any court or governmental or administrative authority competent to require the same; or

# for the purpose of making a protected disclosure under the whistle-blowing legislation.

# COUNTERPARTS

# This Agreement may be executed in any number of counterparts, which shall together constitute one agreement.

# Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If this method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each Party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

# Third party rights

# No one other than a Party to this Agreement shall have any right to enforce any of its terms.

# **ILLEGALITY**

# If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted provided always that if any such deletion substantially affects or alters the basis of this Agreement, the Parties shall negotiate in good faith to amend and modify the provisions or terms of this Agreement as may be necessary or desirable in the circumstances.

# NO PARTNERSHIP OR AGENCY OR TRUST

# Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or trust and trustee relationship between any of the Parties, constitute any party the agent of another party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

# Governing law and JURISDICTION

# 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. 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).

# ESCALATION

# If a Party has any issues, concerns or complaints concerning the provisions of this Agreement, it shall in the first instance seek to resolve that issue by a process of consultation with the other Party/Parties (as relevant). The Parties shall in good faith use all reasonable efforts to resolve the issue(s) through internal consultation as soon as reasonably practicable. If the dispute is not resolved, then the relevant Parties may refer the matter for mediation to an independent party as they agree.

# VARIATION AND ADDING NEW PARTIES

# This Agreement may be varied by the mutual agreement of all the Parties in writing.

# REVIEW

# This Agreement shall be subject to formal review, not less than annually.

# COSTS

# Each Party shall be responsible for their respective costs in maintaining the Agreement.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be duly executed the day and year first before written

………………………………..                                     ………………………………..

**[name/role]**

as authorised signatory for

and on behalf of

**[NHS Organisation 1]**

………………………………..                                     ………………………………..

**[name/role]**

as authorised signatory for

and on behalf of

**[NHS Organisation 2]**

………………………………..                                     ………………………………..

**SCHEDULE 1**

**SERVICES**

|  |  |
| --- | --- |
| Service | [Details of the service which will be subject to collaborative working] |
| Job Titles | [List all job titles/roles which may be included under this service] |
| Commencement Date | [INSERT] |
| Duration/Review period | [Insert fixed term period where the service is to be provided for a fixed term only or review period where it is not fixed] |
| Qualifications | The Employing Party warrants that each Staff Member will have qualifications, professional registrations and DBS clearance at an appropriate level in relation to their role at the Employing Party so as to enable the Staff Member to carry out the same role at the Receiving Party.  [List the qualifications which are required for this particular service] |
| Mandatory training | [*Option 1:* The Staff Member will be compliant with all mandatory and statutory training at their Employing Party and will have an up to date sufficient DBS check in relation to their role at the Employing Party.]  [*Option 2*: The Staff Member shall be up to date with the following training before they attend at the Host Trust:   * [List the training which is required for this particular service]] |
| Termination provisions | The termination provisions set out in the Agreement shall apply to this Schedule.  [INCLUDE SPECIFIC PROVISIONS HERE] |
| [SPECIFIC PROVISION REGARDING SERVICE] | [Details to be included of any terms additional to those set out in the Agreement  *E.g. expenses, practical points such as uniform and security passes*] |

**SCHEDULE 2**

**DRAFT MOBILITY CLAUSE**

Your normal place of work will be as set out at [cross reference contract clause setting out normal place of work] but you may be required to work elsewhere as determined by the needs of the organisation and the duties of the post, subject to reasonable notice. This may include working at any site operated by the organisation and any premises operated by [reference alternative organisation], the details of which will be provided to you. Any excess travel from home to base incurred as a result of you agreeing to change your place of work will be paid as per the [organisation’s] Excess Travel Policy. There is no requirement for you to work outside the UK.

**LICENCE TO ATTEND**

|  |  |
| --- | --- |
| **For: [Name of Staff Member]** (“**You**”or“**Your**”) |  |
| **Of: [Name of Employing Party]** (“**your employer**”) |  |
| **Date issued:** [**insert**] |  |
| **Issued in respect of attendance at Receiving Party** |  |
| **Valid from:** [**insert**] |  |
|  |  |
| **Signed: ………………………**  **Name: ………………………**  **(HR – Employing Party)** | **Date** |
| **Signed: ………………………**  **Name: ………………………**  **(Employee)** | **Date** |

1. **Scope of Licence to Attend:** 
   1. The terms of this Licence to Attend shall apply to work at any of the designated sites of [NHS organisation 2] (“**Receiving Party**”)which you may be instructed to attend by your employer from time to time. This Licence to Attend permits you to perform such duties at the Receiving Party as shall be reasonably considered to be within the remit of your role at your employer.
   2. The terms of this Licence to Attend authorise you, when and as required and agreed between you and your employer, to perform duties on the sites of the Receiving Party or to work remotely for the Receiving Party.
   3. Your terms and conditions of employment with your employer will remain the same at all times save as set out below.
   4. This Licence to Attend does not constitute a contract of employment with the Receiving Party or designate you as a worker of the Receiving Party and you will not be entitled to any payment over and above your normal contractual entitlements with your employer as a result of undertaking any work at the Receiving Party under this Licence to Attend.
   5. This Licence to Attend will terminate immediately if you cease to be employed by your employer for whatever reason (including dismissal with or without notice or resignation).
2. **Terms of Licence to Attend:** 
   1. This Licence to Attend may be terminated by the Receiving Party at any time including where either your employer or the Receiving Party have concerns regarding your conduct or capability including but not limited to circumstances where you have been suspended or excluded, where your practice has been restricted and/or where you are subject to an investigation or disciplinary process.
   2. Under this Licence to Attend and as required and agreed between you and your employer, you may from time to time be required to work at any of the Receiving Party’s sites to perform your role. This is to enable the Receiving Party to best deploy staff to ensure the best outcomes for the people in their care.
   3. When you are working at the Receiving Party, you will continue to be subject to the policies and procedures of your employer. This includes those in respect of matters of conduct, performance, sickness and other leave, pay and grievance. However, you must comply with the relevant health and safety and information governance policies of the Receiving Party and any other relevant policies drawn to your attention by the Receiving Party.
   4. You must have completed any training which is necessary to perform your role, including statutory and mandatory training, and details of this will be shared between your employer and the Receiving Party.
   5. You must decline any duties or responsibilities for which you do not have the necessary skills, experience, qualification or training by notifying your line manager at your employer and your supervisor at the Receiving Party as soon as reasonably possible and at all times ensuring that the impact on patient care and safety is minimised.
   6. You must take every reasonable care for the health and safety of yourself and of others. You must perform your duties diligently and to the best of your ability and must not intentionally or recklessly interfere with, or misuse, anything provided in the interests of health, safety or welfare.
   7. Whilst working at the Receiving Party you are likely to have access to information concerning the private affairs of the people in their care, the general public or of employees of the Receiving Party. Such information must always be treated as confidential. Breach of confidentiality may be treated as a disciplinary offence. This does not prevent you from making a protected disclosures under the Employment Rights Act 1996.
   8. Whilst you are working at the Receiving Party you will be covered by the Receiving Party’s’ insurance policies.
   9. The Receiving Party does not accept responsibility for damage or loss of your personal property on the Receiving Party’s premises, whether by fire, theft or otherwise. The exception to this is where money or valuables have been handed to the Receiving Party for safe keeping and for which a receipt has been given.
   10. You will work such hours as to meet the demands of the service as directed by your employer and the Receiving Party provided your employer and the Receiving Party shall at all times comply with the Working Time Regulations 1998.
   11. You acknowledge and agree that your employer may share data with the Receiving Party in order for you to deliver your duties under the Licence to Attend.
   12. For information about how the Receiving Party will process your personal data, please see the privacy notice attached (which may be updated from time to time).
   13. You will continue to be subject to the policies and procedures of your employer (including in relation to expenses). This includes those in respect of matters of conduct, performance, sickness and other leave, and grievance. Doctors shall be subject to their employer’s MHPS or equivalent policy and the Responsible Officer applicable to their role shall continue to be the one nominated as such by their employer.
   14. Any intellectual property created by you whilst working at the Receiving Party shall remain the property of your employer save where otherwise expressly agreed in writing.
   15. This Licence to Attend can be varied or amended by the Receiving Party at any time to reflect their needs, and you will be advised of any changes in writing.

**Staff Sharing Privacy Notice**

1. **Purpose of this Privacy Notice**
   1. This Privacy Notice is provided on behalf of your employer and the other Party listed below (“Receiving Party”) (together “us” or “we”). The relevant Party’s Data Protection Officers (DPOs) are also listed below:

|  |  |
| --- | --- |
| [NHS Organisation 1] | [*insert DPO and contact details*] |
| [NHS Organisation 2] | [*insert DPO and contact details*] |

* 1. This notice explains what personal data, and why that personal data, will be shared between your employer and a Receiving Party which you may be instructed to attend by your employer from time to time.
  2. Please ensure that you read this notice and any other notice your employer or any Receiving Party may provide to you from time to time when we collect or process personal information about you. This notice is supplemental to the employment privacy notice provided by your employer.
  3. We are separate ‘controllers’ of the data we process about you, which means that we are separately responsible for deciding how and why we use that data. Your employer and a Receiving Party may at times be acting as joint controllers, where joint processes are carried out, such as in relation to joint disciplinary or grievance investigations, and as such will be jointly responsible for deciding how and why your data is used.

1. **The information we process about you**
   1. We may share the following information about you, for the following reasons:

| **The information we collect** | **Source of the information** | **Why we collect the information** |
| --- | --- | --- |
| Your **name, contact details** (i.e. address, home and mobile phone numbers, email address) and **emergency contacts** (i.e. name, relationship and home and mobile phone numbers) | Your employer | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Public task**: to better perform our public healthcare functions by sharing resources, as well as our public functions as an employer  **Legitimate interests**: to enable us to maintain records and good employment practice |
| Your **job title** and **line manager** and details of your **qualifications, experience, working hours** and **mandatory training compliance** | Your employer | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Public task**: to better perform our public healthcare functions by sharing resources and to ensure that those working at our premises are appropriately qualified, as well as our public functions as an employer |
| The amount of your **salary** | Your employer | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Public task**: to better perform our public healthcare functions by sharing resources, and discharge our public functions as an employer |
| Information about your **physical or mental health**, or disability status, to ensure your health and safety in the workplace and to provide appropriate workplace adjustments | Your employer | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Legal obligations:** to comply with our legal obligations  **Employment:** for your employer to carry out its employment obligations |
| Information about **grievances** and **disciplinary processes** involving you | Your employer and/or a Receiving Party | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Legal obligations:** to comply with our legal obligations  **Employment:** for your employer to carry out its employment obligations  **Legitimate interests:** for a Receiving Party to ensure safe working practices at its premises |
| Details of your **time and attendance** at a Receiving Party | Receiving Party | **Contract:** for your employer to perform your employment contract and for the purposes of the Licence to Attend  **Legitimate interests and public interests as an employer**: for the Receiving Party to monitor and manage staff access to its systems and facilities and to record staff absences, including for fraud prevention purposes. |
| **Equality** monitoring data | Your employer | **Public task**: for the Receiving Party to ensure meaningful equal opportunity monitoring and reporting, in line with obligations under the Equality Act and other guidance on promoting equality. |

1. **Who we may share your information with**
   1. Your employer will share information with a Receiving Party as necessary, where you are instructed by your employer to attend that Receiving Party. That Receiving Party will share any relevant information back to you employer.
   2. A Receiving Party may also share your personal data with other parties, such as service providers, external contractors, professional advisers and in relation to any merger or organisational restructuring.
2. **Retention and security of your information**
   1. We will each be separately responsible for storing any personal data we collect about you, in accordance with individual retention policies. You can request copies of the retention policies of each Party from the DPOs noted above.
   2. We each have appropriate security measures in place to prevent personal information from being accidentally lost, or used or accessed in an unauthorised way. We limit access to your personal information to those who have a genuine business need to know it. You can request copies of the security policies of each Party from the DPOs noted above.
3. **Your rights**
   1. By law you have certain rights, under certain circumstances, in relation to your personal information processed by your employer or a Receiving Party. These include:
      1. Access to your personal information (commonly known as a “data subject access request”).
      2. Correction of any incomplete or inaccurate personal information that we hold about you.
      3. Erasure of your personal information in limited circumstances (which are unlikely to apply).
      4. Objection to the processing of your personal information if we are relying on a legitimate interest (or those of a third party) or public interest/official authority as our lawful basis for processing and there is something about your particular situation which leads you to object to processing on this ground.
      5. Restriction of processing of your personal information, for example if you want us to establish its accuracy or the reason for processing it.
      6. The transfer of your personal information to another party in limited circumstances.
   2. If you want to exercise any of these rights, please contact the relevant Party’s DPO.
4. **Right to complain to the ICO**
   1. You have the right to complain to the Information Commissioner's Office (ICO) if you are not satisfied with the way one or a number of us use your information. More information, including how to contact the ICO, is available on the ICO’s website: [www.ico.org.uk](http://www.ico.org.uk)

**SCHEDULE 3**

**DATA SHARING PRINCIPLES**

1. **Definitions**
   1. In addition to the terms defined in the Agreement, the following terms shall have the following meaning in this Schedule 3.

|  |  |
| --- | --- |
| **Data Subject** | has the meaning set out in the Data Protection Laws; |
| **Information** | means the information, including Personal Data, which is shared by the Parties further to this Agreement; |
| **Personal Data Breach** | has the meaning set out in the Data Protection Laws; |
| **Processor** | has the meaning set out in the Data Protection Laws; |
| **Processing** | has the meaning set out in the Data Protection Laws and “Process” and “Processed” shall be construed accordingly; |
| **Special Category Personal Data** | has the meaning set out in the Data Protection Laws and for the purpose of this Agreement shall include information about an individual’s involvement in criminal activity or any conviction for such activity. |

1. **Personal Data to be shared and purposes of sharing**
   1. The Personal Data that is being shared relating to Staff Members includes:-
      1. [Personal information: name, date of birth, gender, National Insurance number, any reasonable adjustments required, equality monitoring data
      2. Contact information: address, telephone number, emergency contact details
      3. Employment information: length of employment, job title, seniority/ experience, competencies, professional qualifications, professional registration details, type of employment (FTC / permanent), place of work, weekly hours/FTE, salary band / grade, salary, pay date, annual leave entitlement, sick pay entitlement, pension scheme membership, notice period, flexible working arrangements, completion of relevant employment checks, including right to work and DBS, mandatory training compliance, line managers
      4. Performance information: grievance/disciplinary information, information relating to the operation of relevant HR policies and procedures, any restrictions on practice, any ongoing legal action
      5. Special Category Personal Data: race/ethnicity, religious beliefs, data concerning physical and mental health, criminal convictions and offences]
   2. The purpose for sharing the Personal Data is to facilitate collaborative working between the Parties and to improve the portability of staff between the Parties as set out in this Agreement. The Parties shall Process Personal Data of Staff Members for personnel administration and management purposes and to comply with their obligations regarding the keeping of personnel records.(**Agreed Purposes**)
   3. The Personal Data of patients or other staff members of a Receiving Party may also need to be shared to facilitate and assist in the management of complaints against Staff Members and in the preparation of defending a claim in law or otherwise. Where information may be shared in an unusual, unexpected or potentially repercussive manner by the Receiving Party, it will notify the Employing Party and the Data Subject as appropriate.
2. **Legal basis for sharing Personal Data** 
   1. The Parties have determined that it is fair and lawful to transfer Personal Data within the Information to achieve the Agreed Purposes.
   2. For the purposes of Article 6 UK GDPR, the legal basis for sharing Personal Data is:
      1. the performance of an agreement to which the Staff Member is party (Article 6(1)(b) UK GDPR), e.g. employment contracts and the Licence to Attend; and/or
      2. compliance with a legal obligation to which the Controller is subject (Article 6(1)(c) UK GDPR), e.g. compliance with employment law obligations; and/or
      3. the performance of a task carried out in the public interest and/or in the exercise of official authority vested in the Controller (Article 6(1)(e) UK GDPR), including (among other obligations) powers to employ or engage staff in Schedule 4 of the NHS Act 2006 (for parties that are NHS Trusts) and s. 47 of the NHS Act 2006 (for parties that are NHS Foundation Trusts) and duties to cooperate; and/or
      4. where the Processing of Personal Data is not further to the exercise of public functions of the Parties, the Processing is in their legitimate interests (having taken account of the rights and interests of the Data Subjects), under Article 6(1)(f) UK GDPR.
   3. The legal basis for sharing any Special Category Personal Data is:
      1. for the purposes of carrying out the obligations and exercising specific rights of the Controller or of the Data Subject in the field of employment and social protection law (Article 9(2)(b) UK GDPR and Schedule 1 paragraph 1 of the DPA 2018); and/or
      2. as part of the management of healthcare services (Article 9(2)(h) UK GDPR and Schedule 1 paragraph 2 of the DPA 2018); and/or
      3. processing is carried out under official authority or is authorised by law (in relation to Personal Data relating to criminal convictions and offences) (Article 10 UK GDPR).
3. **Compliance with the data protection principles**
   1. Each Party agrees that:
      1. it will only Process Information for the Agreed Purposes or otherwise in compliance with the Data Protection Laws (the Parties acknowledge that sharing information with regulators where appropriate forms part of and is compatible with this purpose);
      2. it will only Process information which is necessary and proportionate about Data Subjects;
      3. it will not transfer any Information outside the United Kingdom or European Economic Area without conducting appropriate due diligence, notification of Data Subjects and ensuring safeguards for Personal Data;
      4. it will ensure there is a written data processing agreement in place with any Processor used to Process the Information;
      5. it will ensure that its record of processing Information maintained for the purposes of Article 30 UK GDPR covers the Processing of Information for the purposes of this Agreement;
      6. it will comply with the information security arrangements set out in paragraph 7 below;
   2. The Parties are jointly responsible for providing privacy information to Staff Members as part of this data sharing initiative. An agreed form of privacy notice (which may be updated from time to time by agreement between the Parties) is attached to the Licence to Attend, which the Employing Party will ensure is provided to, or brought to the attention of, Data Subjects. For any Processing of Personal Data beyond the scope of the arrangement and/or the privacy notice attached to the Licence to Attend, each Party is separately and individually responsible for ensuring that Data Subjects are provided with the necessary privacy information in compliance with Articles 13 and 14 of the UK GDPR.
   3. The Parties will work to ensure that any Information shared is accurate and up to date. In the event that Information is found not to be accurate the Parties will promptly notify one another of any error and work cooperatively to rectify the issue with all appropriate speed.
   4. The Parties agree to provide reasonable assistance to each other in the completing of any data protection impact assessment (**DPIA**) which relates to this data sharing initiative. Mitigations to any privacy or other risks will be implemented as described in the DPIA.
   5. This Schedule, together with any other relevant documentation forms an **Appropriate Policy Document** for the purposes of Schedule 1 Part 4 of the DPA 2018.
4. **Data Subjects’ rights and complaints**
   1. The Parties agree that they will each be separately responsible for responding to requests they receive from Data Subjects in respect of the Personal Data. They will each provide such assistance as is reasonably required to enable the other party to comply with requests from Data Subjects to exercise their rights under the Data Protection Laws within the time limits and other parameters imposed under the Data Protection Laws.
   2. In the event of a dispute or claim brought by a Data Subject or the Information Commissioner concerning the Processing of the Personal Data against one or both of the Parties, the Parties will inform each other without undue delay about any such dispute or claim, and will reasonably cooperate with a view to settling it amicably in a timely fashion.
   3. Each Party shall maintain a record of requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
5. **Personal Data Breaches**
   1. If a Party becomes aware of a Personal Data Breach involving the Information shared under this Agreement, it shall promptly notify the another Party where the other Party is likely to be affected by the Personal Data Breach, irrespective of whether there is a requirement to notify the Information Commissioner or Data Subject(s).
   2. Each Party shall comply with its obligation to report a Personal Data Breach to the Information Commissioner and (where applicable) Data Subjects under the Data Protection Laws, provided that the other Party shall have the opportunity to review and approve any breach notification which mentions that Party. To the extent the Parties are jointly responsible for a Personal Data Breach, the Parties agree to work collaboratively to determine the manner of such notification and an equitable apportionment of notification costs, taking into account the relative fault of the Parties.
   3. The Parties shall reasonably cooperate with one another in taking prompt and proper remedial action regarding any such Personal Data Breach or incident.
6. **Information security arrangements**
   1. Any Information shared further to this Agreement will be transferred securely between the Parties through secure electronic means/ NHSmail.
   2. The Parties will have regard to each others’ information security and governance needs and take appropriate measures (including any which are requested by the Party disclosing the Information) to keep the Information secure and prevent unauthorised access to or other Processing of the Information. In particular, this means that each Party will ensure that:
      1. it maintains appropriate technical and organisational measures:

to demonstrate how the UK GDPR is complied with generally in connection with this data sharing activity including through compliance with the requirements of the NHS Data Security and Protection Toolkit;

to prevent the unauthorised or unlawful Processing of Information and accidental loss or destruction of, or damage to, the Information shared further to this Agreement;

* + 1. it adheres to any specified security arrangements notified by another Party from time to time;
    2. its staff will be appropriately trained in matters relating to data protection and confidentiality;
    3. only those staff with a business need to know the Information will be allowed to have access to it;
    4. its staff will have read and accepted the relevant policies and acceptable usage agreements when given access to systems;
    5. its staff deployed to another Party will only further use any Information they obtain (whether that be written information or verbal information) from that other Party for legitimate and lawful purposes;
    6. its offices and equipment (including in particular portable IT equipment) on which the Information is used or stored will be kept secure and encryption technology will be deployed where possible in relation to the Information;
    7. any Information which is not needed temporarily is stored securely; and
    8. any Information which is no longer needed permanently is securely destroyed.
  1. The Parties will comply with the requirements of all relevant laws, good practice, and Codes of Practice issued by the Information Commissioner.
  2. The Parties will promptly notify the other Parties (where appropriate) of starters, leavers, movers and any individual who is required to have system access revoked for the security of Personal Data.

1. **Single point of contact**
   1. Each Party will have a single individual who will be responsible for ensuring compliance with this Schedule 3 of the Agreement, the information security arrangements described in paragraph 7, and to whom all notices regarding this Schedule 3 are to be sent. For each Party the responsible person is:

|  |  |  |  |
| --- | --- | --- | --- |
| **Organisation** | **Name** | **Role** | **Contact details** |
| [NHS Organisation 1] | [insert] | [Data Protection Officer] | [insert] |
| [NHS Organisation 1] | [insert] | [Data Protection Officer] | [insert] |

1. **Review of data sharing arrangements**
   1. The Parties shall periodically review the effectiveness of this Schedule 3 having consideration to the Agreed Purposes and shall amend the data obligations under this Agreement depending on the outcome of this review. The review may include, but shall not be limited to:
      1. The ongoing relevance of any DPIA covering the Processing undertaken under this Agreement (and whether a further DPIA needs to be undertaken);
      2. Any incidents or complaints involving the Information, and whether further measures need to be taken to avoid similar incidents arising in the future;
      3. The relevance and accessibility of privacy information provided to Data Subjects;
      4. Whether the sharing of Information remains necessary and proportionate to achieve the Agreed Purpose.
2. **Record keeping** 
   1. An Employing Party should keep a log of any arrangement made under this Agreement to transfer a Staff Member and these records should be kept for a minimum period of 6 years which should be available to the Receiving Party.
3. **Retention and destruction of Information**
   1. The Parties will maintain the Information in accordance with the retention periods specified in their information and security management policies.
   2. When it is no longer necessary to hold the Information, it will be securely and confidentially destroyed and a record will be maintained of that destruction.