

Workforce Portability Agreement

for the

COVID-19 Response to supporting Social Care

THIS AGREEMENT is made on

BETWEEN:-

1. The Parties listed at Schedule 1 to this Agreement;

each a "Party" and together be the "Parties".

WHEREAS:-

- (A) It is anticipated that Care Homes [and Local Authorities] will, from time to time, require additional workforce resources in order to enable them to respond effectively to the direct and indirect impact of the Covid-19 crisis on the provision of the social care services (the "**Services**"). The Parties have agreed that the NHS trust (the "**Trust**") shall provide members of staff ("**Staff Members**") in order to assist with the provision of the Services on a temporary basis. The Parties confirm that they have the necessary authority to transfer Staff Members in the way envisaged under this Agreement.
- (B) This Agreement relates to Staff Members who are substantively employed by the Trust (the "**Employing Party**") but are provided to work for another Party (the "**Receiving Party**"), under its terms. The Receiving Party under this Agreement will be a Care Home or other provider of the Services. A separate agreement is in place to manage the movement of staff between NHS funded services or between NHS organisations.
- (C) The Parties have agreed that the Staff Members will be deployed to work with a Receiving Party on a full time or part time rota and shall work such hours as to meet the demands of the service during the Covid-19 crisis and as directed by the Receiving Party and provided the Parties comply with the Working Time Regulations 1998.
- (D) The Staff Members who are provided under this Agreement shall provide assistance to the Receiving Party in the provision of care. Such assistance is likely to include, but may not be limited to: basic nursing care, administration of medication; specific care as outlined in care plans; and end of life/palliative care.
- (E) This Agreement and the Schedules shall apply to the Services provided by Receiving Parties only and shall not apply to NHS or private healthcare services provided by the Parties including but not limited to work through private agencies or at private hospitals.
- (F) Existing staff portability agreements between the Parties or with other NHS organisations will not be affected by this Agreement.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

" Agreement "	means this workforce sharing agreement together with the schedule to this agreement;
" Commencement Date "	means [INSERT DATE];
" Confidential Information "	means this Agreement and all other agreements entered into pursuant to this Agreement and all financial, business and technical or other data and all other confidential information (whether written, oral or in electronic form or on magnetic or other media) concerning the business and affairs of one

Party that another Party obtains, receives or has access to as a result of the discussions leading up to or the entering into or the performance of this Agreement and all confidential information which a Staff Member may access in performing the services under this Agreement;

“Days”

means days of the week;

"DPA"

means the Data Protection Act 2018;

"Good Industry Practice"

means such practice as may be expected of a properly qualified competent and experienced NHS employer, Local Authority, Care Home or other provider of the Services accustomed to carrying out services of the same or similar nature, scope and complexity to the work which shall be undertaken in response to the Covid-19 crisis, such practice to be carried out in a proper, professional prompt and business-like manner using all of the skill, expertise and attention as is to be expended of an NHS employer, Local Authority or Care Home or other provider of the Services;

“Law”

means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives, delegated or subordinate legislation in England & Wales;

“Losses”

means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding loss of profits (other than profits directly and solely attributable to provision of the services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

2. COMMENCEMENT AND TERM

This Agreement shall take effect and commence on the Commencement Date and shall continue until and unless terminated in accordance with clause 5 (Termination).

3. PROVISION OF STAFF MEMBERS

- 3.1 Subject to each Party's obligation to meet the needs of its own patients and staff, each Party shall cooperate to ensure the most efficient and effective deployment of Staff Members in response to the Covid-19 crisis.
- 3.2 The details of the arrangement between each of the Parties made pursuant to the terms of this Agreement, including but not limited to the number, names and roles of Staff Members to be provided shall be agreed in writing between the relevant Parties in advance of the attendance by the Staff Members at the Receiving Party's sites.
- 3.3 In advance of attendance at a Receiving Party's sites and on behalf of the Receiving Party, each Employing Party warrants that they shall provide a licence to attend in the same form as Schedule 2 to all Staff Members who have agreed will abide by the terms of the licence to attend.
- 3.4 The Employing Parties agree 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.
- 3.5 Where Staff Members are provided to Receiving Parties under the terms of this Agreement the Employing Party warrants that each Staff Member has been subjected to and met the necessary NHS Employment Check Standards.
- 3.6 Any additional Receiving Party-specific mandatory training shall be provided to the Staff Members by the Receiving Party.
- 3.7 Any movement of staff is on a voluntary basis, and only with the agreement of the staff member. The arrangement should be reviewed on a monthly basis and the staff member may terminate the agreement at any time. Any such discussions should include consultation and information requirements and guidance around claiming additional expenses, and this must be followed prior to any move taking place.
- 3.8 By agreement between the parties, a staff member who is a substantive employee of one of them, may be transferred on a temporary basis to work for the receiving party, subject to the contractual relationship between each member of staff and their respective employing body. This arrangement must be in agreement with the member of staff .

4. LIABILITY AND INSURANCE

- 4.1 Without prejudice to its liability for breach of any of its obligations under this Agreement, each Party shall remain liable to the other Parties for, and shall indemnify each other and keep them indemnified against:

4.1.1 any Losses including without limitation in respect of:

- (a) any loss of or damage to property (whether real or personal); and
- (b) any injury to any person, including injury resulting in death;

that result from or arise out of the Party's negligence or breach of contract in connection with the performance of this Agreement including without limitation negligence and/or breach of contract by the Party and/or its staff, employees, agents or directors except where Losses have been caused by another Party that is party to this Agreement or its staff, employees, agents or directors.

- 4.2 During the term of this Agreement and for a period of 21 years thereafter each Party shall at their own cost and in compliance with Good Industry Practice procure and maintain in force appropriate insurance to cover Staff Members and the Services provided 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.

- 4.3 Each Party shall on the other Party's request, provide documentary evidence of the fact that the appropriate insurance referred to in 4.2 is in place. A Receiving Party will provide written confirmation to the Employing Party that adequate insurance cover is in place on each occasion that Staff Members are deployed under this Agreement. Such confirmation will be provided at the same time as arrangements are confirmed between the Parties for each deployment of Staff Members as outlined in clause 3.2.

5. TERMINATION

- 5.1 Any Party may terminate this Agreement insofar as it applies to it by giving two weeks' notice to the other Parties in writing. In the event of termination under this clause 5.1, the Agreement shall continue in full force and effect for all other Parties.
- 5.2 If a staff member decides for any reason they no longer wish to participate in this agreement, they should immediately make contact with their **{named person}** to discuss their withdrawal. Where shifts or a working pattern have been agreed in advance by an individual, the minimum notice period remains as stated in clause 5.1 unless under exceptional circumstances
- 5.3 Notwithstanding anything contained elsewhere in this Agreement, the provisions contained in clauses 4, 6, 7, 8 shall survive the expiry or termination of this Agreement however caused and shall continue thereafter in full force and effect.

6. INDEMNITIES AND WARRANTY

- 6.1 A Receiving Party hereby represents and warrants as follows:
- 6.1.1 it complies and shall continue to comply with all relevant health and safety legislation applicable to the protection of staff and service users on its premises and/or under its direction or care;
- 6.1.2 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;
- 6.1.3 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;
- 6.1.4 it shall provide the Staff Members with access to adequate personal protective equipment to practise safely in the environment they are working.
- 6.2 The Receiving Party shall not require the Staff Members to undertake any duties that they consider to be outside their capabilities and/or that they feel untrained and/or unprepared for.
- 6.3 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 engaged by their employer as at the date of this Agreement.
- 6.4 If, contrary to the intentions, understanding and agreement of the Parties, at any time during this Agreement any contract of employment or collective agreement between any Staff Member and their employer, has effect as if originally made between the Receiving Party and the Staff Member as a result of the provisions of TUPE or otherwise, then the Employing Party shall act reasonably in facilitating the transfer of the staff member(s) to the Receiving Party.

- 6.5 All employee relations matters including grievance, discipline, leave, sickness and/or performance relating to Staff Members shall be dealt with by the Employing Party. The Employing Party and Receiving Party shall cooperate at all times with any such employment 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.
- 6.6 The Receiving Party shall have day-to-day control of the Staff Members' activities whilst they are deployed and providing the Services under the terms of this Agreement but as soon as reasonably practicable shall refer any management issues (referred to in 6.5) concerning a Staff Member that come to its attention to the Employing Party.
- 6.7 Without prejudice to clause 4.1 above, the Receiving Party shall have sole liability for any Losses suffered or incurred by it or any third party arising out of or in connection with the acts or omissions of any Staff Member, including any negligent or reckless act or omission.
- 6.8 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 any clinical negligence or other claims which arise out of or in connection 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, officer or employees of whatever kind.
- 6.9 If a Party becomes aware of any matter that may give rise to a claim or complaint against another Party or any of its directors, officers, employees, workers or contractors, notice of that fact shall be given as soon as possible to the relevant Party.
- 6.10 Each Party shall, at its own expense, provide any other Party with such reasonable assistance as that Trust 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 DPA.

7. CONFIDENTIALITY

- 7.1 The Parties agree to keep confidential and not use or disclose any Confidential Information which may come to its possession or knowledge.
- 7.2 The Parties hereby undertake to each other to make all Staff Members, employees, agents, advisers and sub-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 employees, agents, advisers and sub-contractors with the provisions of this clause.
- 7.3 The provisions of this clause shall not apply so as to prevent disclosure of Confidential Information where and to the extent that such disclosure is required to be made:
- 7.3.1 by Law;
 - 7.3.2 by any court or governmental or administrative authority competent to require the same; or
 - 7.3.3 for the purpose of making a protected disclosure under the whistle-blowing legislation.

8. DATA AND MONITORING

- 8.1 The Parties shall comply with and shall use reasonable endeavours where reasonably requested to assist each other with complying with any and all obligations under the General Data Protection Regulation (“GDPR”), the DPA and or the FOIA including but not limited to the provision of information to enable a Party to respond to lawful requests and to ensure that any data processed to enable the furtherance of this Agreement is done so lawfully.
- 8.2 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. The Parties shall be data controllers responsible for all the data they collect. The Parties shall each inform Staff Members about the processing they undertake in accordance with their responsibilities under chapter 3 of the GDPR
- 8.3 The Parties shall have regard to each other’s’ information security and governance needs and take appropriate measures (including any which are requested by the Party disclosing personal data) to keep the information secure and prevent unauthorised access to or other processing of the personal data.
- 8.4 Where a Party receiving personal data becomes aware of any loss, unauthorised disclosure or other unlawful processing of personal data shared under this Agreement it will immediately notify the Party which has disclosed the personal data of this breach and will allow the disclosing Trust to inspect its arrangements for ensuring the security of data shared under this Agreement.

9. PAYMENTS

- 9.1 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.
- 9.2 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.
- 9.3 The Parties agree that the Employing Party will not charge the Receiving Party any costs for the provision of the Staff Members. Where Staff Members work in excess of their contracted hours whilst providing services at the Receiving Party, the cost of such hours will be met by the Employing Party. The Parties agree that the Receiving Party will not require Staff Members to work in excess of their contracted hours or undertake work that would entitle them to enhanced rates of pay without first seeking approval from the Employing Party.

10. 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.

11. VARIATION

The signatories to this Agreement agree that the terms of this Agreement may be varied by Agreement of the Parties.

12. EXECUTION AND COUNTERPARTS

12.1 This Agreement shall be binding on each Party to this Agreement on the date on which the Party executes the Agreement.

12.2 This Agreement may be executed in counterparts, which when together shall constitute one and the same instrument. It is the intention of the Parties that [the Trust] shall act as the lead Party and will collate the counterparts as executed by the Parties which shall be available on request by the other Parties.

13. NOTICE

Any notice to be served on any of the parties by any other shall be sent by prepaid recorded delivery or registered post or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by facsimile transmission or electronic mail to the correct facsimile number or electronic mail address of the addressee (with correct answerback).

14. THIRD PARTIES

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to and does not give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with English Law.

15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

Signed

Dated

On behalf of [INSERT PARTY]

SCHEDULE 1
PARTIES TO THE AGREEMENT

[TO BE INSERTED]

SCHEDULE 2

Licence to Attend

The Employing Party warrants that it will draw this Licence to Attend to the attention of the Staff Members who will provide services at the Receiving Party under the Agreement.

1. Scope of Licence to Attend:

- a) The terms of this Licence to Attend shall apply to work at any of the designated sites with **[insert names of relevant Care Home/Local Authority the Staff Member will be required to attend]** (individually the “Host Organisation” and collectively the “Host Organisations”) which you may be instructed to attend by your employer. This Licence to Attend permits you to perform such duties at the Host Organisations as shall be reasonably considered to be within the remit of your role at your employer.
- b) 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 premises of the Host Organisations in response to the Covid-19 crisis.
- c) Your terms and conditions of employment and/or your partnership agreement with your employer will remain the same at all times save as set out below.
- d) This Licence to Attend does not constitute a contract of employment with the Host Organisations 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 Host Organisations under this Licence to Attend.
- e) 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:

- a) This Licence to Attend may be terminated where either your employer or the Host Organisations have concerns regarding your conduct or capability including but not limited to circumstances where you have been suspended or excluded under your contract of employment with your employer, where your practice has been restricted and/or where you are subject to an investigation or disciplinary process.
- b) 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 Host Organisations’ sites to perform your role. This is to enable the Host Organisations to best deploy staff to ensure the best outcomes for the people in their care.
- c) When you are working at a Host Organisation’s premises 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 Host Organisations.
- d) 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 Host Organisation as soon as reasonably possible and at all times ensuring that the impact on patient care and safety is minimised.

- e) 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. Your employer will provide you with personal protective equipment (PPE) and any required personal risk assessment (eg if you are in a designated clinically vulnerable group) to enable you to undertake your duties with the Host Organisation safely. The Host Organisation will also provide you with access to PPE should you require it (for example, if some additional PPE is required to practise safely in the environment you are working).
- f) Whilst working at a Host Organisation 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 Host Organisations. Such information must always be treated as confidential. Breach of confidentiality may be treated as a disciplinary offence under your employer's disciplinary policy. This does not prevent you from making a protected disclosures under the Employment Rights Act 1996.
- g) Whilst you are working at the Host Organisations you will not be covered by an NHS Resolution Indemnity Scheme (either the Clinical Negligence Scheme for Trusts (CNST) or the Clinical Negligence Scheme for Coronavirus (CNSC)), as you will not be undertaking NHS work, but instead you will be covered by the Host Organisations' insurance policy, which will cover you for claims from individuals relating to their care.
- h) You will work such hours as to meet the demands of the service during the Covid-19 crisis and as directed by your employer and the Host Organisation provided your employer and the Host Organisation shall at all times comply with the Working Time Regulations 1998.
- i) This Licence to Attend can be varied or amended by the Host Organisations at any time to reflect the needs of the service, subject to agreed procedures and you will be advised of any changes in writing.