



Business Services Authority

NHS BUSINESS SERVICES AUTHORITY

And

NHS ENGLAND

MEMORANDUM OF UNDERSTANDING

FOR

Doctors in Training Visa and Certificate of Sponsorship Checking Service

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This Memorandum of Understanding is entered into on 1 April 2024.

BETWEEN:

- (1) NHS Business Services Authority, of Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne, NE15 8NY (**the Provider**); and
- (2) National Health Service Commissioning Board known as "NHS England" Quarry House, Leeds, LS2 7UE (**the Customer**).

WHEREAS:

It has been agreed that:

- (a) The Customer wishes the Provider to provide certain services (as defined in Schedule 2).
- (b) The Provider has agreed to provide such services for the Customer in accordance with the terms of this Memorandum of Understanding (MoU).

NOW IT IS HEREBY AGREED as follows:

1. Status of Memorandum of Understanding

- 1.1 The status of this MoU is as an agreement between two public bodies.
- 1.2 The clauses together with Schedule 1 shall prevail to the extent of any conflict or inconsistency over any other provisions or schedules of this MoU.
- 1.1. Each party to this MoU is a health service body within the meaning of Section 9(4) of the National Health Service Act 2006 as amended (the "NHS Act"). Accordingly:
 - (a) this MoU constitutes an "NHS contract" within the meaning of Section 9 of the NHS Act;
 - (b) this MoU is not intended to be legally binding, and no contractual rights or liabilities or other legal rights shall arise between the Parties from this MoU. That being said, the Parties enter into this MoU in good faith, intending to honor all of their respective obligations under this MoU.
- 1.2. The Maximum Value going through this MOU will be £135,650.00 (ex VAT).

2. Interpretation

- 2.1. Under this MoU, the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein.

3. Review of Services

- 3.1 This Memorandum of Understanding shall commence on 1 April 2024 (the "Commencement Date") and shall continue (unless terminated earlier in accordance with clause 13) for a minimum period of 12 months (the "**Initial Period**"). There shall be an option to extend the

term of this Memorandum of Understanding beyond the Initial Period on two occasions, each extension being for a period of 12 months (each an “**Extension Period**”).

- 3.2 For the purpose of clause 3.1, the Customer may make a written request to the Provider to extend the Memorandum of Understanding by a further 12-month period no less than four months before the commencement of the Extension Period to which the written request relates.
- 3.3 Where the Customer makes a request to the extend the Memorandum of Understanding in accordance with clause 3.2, the parties shall formally review and agree any changes to this Memorandum of Understanding within three months of the commencement of the relevant Extension Period. Any changes to this Memorandum of Understanding agreed between the parties shall be effected in accordance with clause 21.

4. Provision of Services

- 4.1. As a consequence of the Provider agreeing to provide the Services and subject to the terms and conditions of this Memorandum of Understanding
 - 4.1.1. the Provider shall perform the Services; and
 - 4.1.2. the Customer shall pay the charges as specified in Schedule 4.
- 4.2. Both parties shall use reasonable endeavors to co-operate in the performance of their respective obligations under this Memorandum of Understanding and mitigate any loss, liability, cost or expense that they may suffer or incur as a result of a Default by the other party of any of its obligations under this Memorandum of Understanding.
- 4.3. To the extent that the Provider is unable to perform, or is hindered or delayed in its performance of the Services as a result of any Customer Default:
 - 4.3.1. the Provider shall not be regarded as having committed any Provider Default thereby;
 - 4.3.2. the Provider shall be entitled to a reasonable extension of time in the performance of the Services; and
 - 4.3.3. the Provider shall be entitled to a reimbursement in respect of any reasonable additional costs which are incurred by the Provider as a direct result of the Customer’s Default;
 - 4.3.4. however, the Provider shall in such circumstances notify the Customer as soon as is reasonably practicable after it becomes aware of any such failure by the Customer and will use all reasonable endeavors to continue to perform its obligations in accordance with this Memorandum of Understanding notwithstanding such failure and to mitigate the effects (including any costs incurred) of such failure.

5. Data Processing Legal basis

- 5.1. The Customer has the following legal basis (by reference to the following articles of the GDPR for Processing the Personal Data:

In relation to Article 6(1) for Personal Data:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- (c) processing is necessary for compliance with a legal obligation to which the Customer is subject.
- (d) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (e) processing is necessary for the purposes of the legitimate interests pursued by the Customer.;

5.2 In relation to Article 9(2) for Special Categories of Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation:

(a) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the Customer or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;

(b) processing is necessary for the establishment, exercise or defense of legal claims or whenever courts are acting in their judicial capacity;

(c) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3 of Article 9 of GDPR;

(d) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

(e) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes

5.3 The Customer ensures that the common law duty of confidentiality has been met in the following way

- a) Consent
- b) Legal obligation

5.4. The Provider acts on behalf of the Customer. Therefore the Provider uses the same legal basis as the Customer for processing personal data under this agreement.

6. Liability for Services

6.1. The Customer shall be responsible for bearing any liabilities, costs, claims and expenses (including but not limited to legal fees), which arise from or are connected to:

6.1.1. any decision which is made by the Customer (notwithstanding that that decision may be based on advice provided by the Provider, except where such advice is unreasonably given); and

6.1.2. acts or omissions by Customer staff, in relation to the Services;

save where such liabilities, costs, claims and expenses (including but not limited to legal fees) arise as a result of acts or omissions on the part of the Provider.

6.2 Nothing within the contract relieves either Party of their own direct responsibilities and liabilities under the GDPR.

6.3 Neither party seeks to exclude or limit its liability to the other party in respect of:

6.3.1 death or personal injury resulting from negligence;

6.3.2 fraud or fraudulent misrepresentation; or

6.3.3 any other circumstances where liability may not be excluded or limited under any applicable law.

6.4 Without prejudice to clause 6.3, each party's total annual aggregate liability to the other arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance, contemplated performance or non-performance of this Memorandum of Understanding shall in no event exceed the charges paid or payable by the Customer in accordance with this Memorandum of Understanding in the year to which the claim relates.

6.5 The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or willful misconduct of the Customer or by breach by the Customer of its obligations under this Memorandum of Understanding.

6.6 Subject always to clause 6.3, in no event shall either Party be liable to the other for any loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or loss of savings (whether anticipated or otherwise); and/or indirect or consequential loss or damage.

6.7 The Provider shall maintain appropriate insurance cover through NHS Resolution in respect of the Services delivered under this Memorandum of Understanding.

7. Charges

7.1. The Customer shall pay to the Provider the Service Charges in accordance with the procedures set out in Schedule 4.

7.2. The Service Charges for the first 12 months of the Memorandum of Understanding from the Commencement Date are set out in Schedule 4. The Service Charges for the period on and from 1 April 2024 shall be agreed between the parties not less than 3 months prior to 1 April 2024 and, where relevant, reviewed and agreed each anniversary thereafter (or such other date agreed between the Parties).

8. Intellectual Property Rights (IPR)

- 8.1. The parties acknowledge that any intellectual property rights owned by either party or created by its employees shall remain the property of the relevant party. The parties will allow each other to use IPR should this be appropriate on a case by case basis.

9. Audit

- 9.1. The Customer's and the Provider's audit responsibilities will be carried out in line with Schedule 6.

10. Warranties

- 10.1. The Provider shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with this Memorandum of Understanding.

10.2 The Provider:-

10.2.1 will perform its obligations with a sufficient number of appropriately experienced and qualified personnel;

10.2.2 will perform its obligations in compliance with all applicable laws and regulatory guidance;

10.2.3 holds all necessary consents, approvals and licenses to perform the Services;

10.2.4 has full capacity and authority to enter into this Memorandum of Understanding;

10.2.5 will perform the Services in accordance with all applicable policies as may be set out in this Memorandum of Understanding or as advised by the Customer from time to time; and

10.2.6 has not committed fraud in entering into this Memorandum of Understanding.

- 10.3. Except as expressly stated in this Memorandum of Understanding, all warranties and conditions, whether express or warranties which would (if this Memorandum of Understanding were legally binding) be implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent which would be permitted by law if this Memorandum of Understanding were legally binding.

11. Client meetings

- 11.1. Customer and Provider meetings shall be conducted as specified in Schedule 2 (Services) and in Schedule 5 (Strategic Review Meetings).

12. Dispute Resolution

- 12.1. Disputes regarding the provision of and delivery of the Services under this Memorandum of Understanding may be referred by any party to the Associate Director of NHS Workforce

Services of the Provider and the Finance and Performance Director of the Customer for resolution.

- 12.2. If a dispute referred in accordance with Clause 12.1 is not resolved within 30 days of such referral, any party may refer it to the Associate Director of NHS Workforce Services of the Provider and the Chief Executive Officer at the Customer for resolution.

13. Termination

- 13.1. Either party may terminate this Memorandum of Understanding by written notice to the other party (taking effect on the date specified in the notice) in any of the following circumstances:
- 13.1.1. a Default is committed by another party where that other party has failed to remedy the relevant Default within sixty (60) days of receipt of written notice from the non-breaching party specifying the Default and requiring its remedy; or
 - 13.1.2. a Default is committed by another party which is not capable of remedy, provided that a Default shall not be treated as incapable of remedy merely because it has already occurred.
- 13.2. Either party may terminate this Memorandum of Understanding for convenience by written notice to the others, such notice to take effect no less than six (6) months from the date of such notice, once this Memorandum of Understanding has been running for at least 18 months.
- 13.3. Either party may terminate this Memorandum of Understanding by written notice to the other (taking effect on the date specified in the notice) if a Force Majeure event arises during the term of this Memorandum of Understanding which directly causes any party to be materially unable to comply with substantially all of its obligations hereunder for a continuous period exceeding six (6) consecutive months and terms for the continued performance of this Memorandum of Understanding are not agreed by the parties within six (6) months of the commencement of the said Force Majeure event.

14. Consequences of Termination

- 14.1 In the event of the termination or expiry of this Memorandum of Understanding, howsoever arising, each Party shall forthwith deliver up to the other Party, or as the other party notifies, all property and data of the other party then held in the custody or control of that Party.
- 14.2 The termination or expiry of this Memorandum of Understanding shall not prejudice or affect any right or remedy which shall have accrued or shall thereafter accrue to any Party.
- 14.3 The provisions of Clauses 1, 2, 6, 7, 8, 9, 12 to 22 and relevant provisions of Schedule 1 shall survive the termination of this Memorandum of Understanding.
- 14.4 The Provider shall be reimbursed by the Customer the costs associated with any redundancies occurring as a direct result of the termination of the Services on a pro-rata basis in accordance with the table set out in section 3 of Schedule 2 (Services).

14.5 The Provider shall cooperate with any the Customer's/replacement provider to the extent reasonably required to facilitate the smooth migration of the Services from the Provider to the Customer's/replacement provider.

15. Protection of Personal Data (Data Protection)

15.1. Each party shall ensure that it complies with and shall not breach the provisions of the General Data Protection Regulation (GDPR), the provisions of Schedule 3, and any other obligations which arise in connection with this Memorandum of Understanding. The Customer will act as Controller and the Provider as Processor.

15.2. Notwithstanding the general obligation in clause 15.1, where the Provider is Processing Personal Data as a Processor for the Customer, the Provider shall:

15.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under Article 5 (1) f) the 'integrity and confidentiality' Principle; and reasonably require to satisfy itself that the Provider is complying with its obligations under Data Protection Legislation;

15.2.2 provide the Customer with such information as the Customer may reasonable request such as the information detailed in Article 28 of GDPR.

15.2.3 not transfer Personal Data outside of the UK and/or the European Union Area;

15.2.4 only process Personal Data in accordance with, and for the purposes set out in, written instructions received from the Customer from time to time.

15.2.5. notify the Customer promptly and without undue delay, and in any event within 24 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach;

15.2.6. promptly notify the Customer of any instruction received that it believed breaches any data protection law pursuant to this clause 15.2;

15.2.7. co-operate with the Customer in informing Data Subjects of any Personal Data breach;

15.2.8. ensure it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under Data Protection Legislation;

15.2.9. Obtain the Customer's approval of any sub-contractor and ensure that they are subject to the same contractual obligations as the Provider in the same terms as this Clause 15;

15.2.10. permit the Customer at any time and from time to time upon seven days' written notice to have escorted access to the appropriate part of the Provider's premises, systems, equipment, and other materials and facilities to enable the Customer to inspect the same for the purposes of monitoring compliance with this Memorandum of Understanding and the Data Protection Act Legislation to the extent that such premises, equipment and other materials and facilities are used for or relevant to the Services. Such inspection shall not relieve the Provider of any of its obligations under this Memorandum of Understanding.

15.3. Where the Provider receives an Data Subject Rights Request (as defined in Articles 15 to 22

of GDPR) from a Data Subject in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):

15.3.1. transfer the Request to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Information Rights Request;

15.3.2. provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within ten (10) Working Days (or such other period as may be agreed) of the Customer requesting that information; and

15.3.3. provide all necessary assistance as reasonably requested to enable the Customer to respond to the Data Subject Rights Request within the time for compliance set out in GDPR.

15.4 The Customer hereby permits the Provider to store Personal Data relating to (the Personal Data being Processed) on a third party supplier's system and the Customer permits the Provider's third party supplier to act as the Processor on its behalf.

15.5. The provisions of this clause 15 shall apply during the continuance of this Memorandum of Understanding and for as long as the Data Protection Legislation requires after its expiry or termination.

16. Scope limitation

16.1 It is accepted by all parties that the Services do not include any services not listed in Schedule 4 and the Provider is only responsible for the services included in Schedule 4.

17. Publicity and Disclosure of Information

17.1. Save as expressly set out in this clause 17, or otherwise with the written consent of the other party, no party shall make any press announcements about this Memorandum of Understanding or publicise this Memorandum of Understanding or any of the terms in any way and each party shall ensure that any such information disclosed is solely for the purpose of performing its obligations under this Memorandum of Understanding.

17.2 Notwithstanding the provisions of clause 17.1, each party shall be entitled to disclose any information relating to this Memorandum of Understanding in the following circumstances:

17.2.1 for the purpose of any examination of this Memorandum of Understanding by the National Audit Office pursuant to the National Audit Act 1983 or otherwise;

17.2.2. for parliamentary, governmental, statutory or judicial purposes; or

17.2.3. in relation to any other legal obligation on the disclosing party; or

17.2.4 such information is already in the public domain.

17.3. Each party shall take all reasonable steps to ensure the observance of this clause 17 by all its servants, employees, agents, and consultants.

18. Freedom of Information

18.1. Each Party acknowledges that the other Party is subject to the requirements of the FOIA and each Party shall assist and co-operate with the other (at their own expense) to enable the

other Party to comply with its information disclosure obligations.

18.2. Where a Party receives a "Request for Information" (as defined in the FOIA) in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors shall):

18.2.1. transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information;

18.2.2. provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as may be agreed) of the other Party requesting that information; and

18.2.3. provide all necessary assistance as reasonably requested to enable the other Party to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.

18.3. Where a Party receives a Request for Information which relates to this Memorandum of Understanding it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information.

18.4. If either Party determines that information must be disclosed pursuant to clause 18.3 it shall notify the other Party of that decision at least two (2) Working Days before disclosure is required.

18.5 Each party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a Request for Information.

18.6. Each Party acknowledges that the other Party may be obliged under the FOIA to disclose information:

18.6.1. without consulting with the other Party; or

18.6.2. following consultation with the other Party and having taken its views into account.

19. Force Majeure

19.1. For the purposes of this Memorandum of Understanding, the expression "Force Majeure" shall mean any event outside the reasonable control of a party, including without limitation war, civil war, armed conflict or terrorist attack affecting the United Kingdom; nuclear, chemical or biological contamination, fire, flood, earthquakes, natural disaster, tempest, extreme weather conditions, national pandemic as defined by the UK Government, riot, civil commotion, lightning, prohibitive legislation and failure of public telecommunications systems or utility (other than power) supplies.

19.2. No party shall be liable to the others for any failure to comply with its obligations under this Memorandum of Understanding (including but not limited to any obligation to make any payment hereunder) due to a Force Majeure event and any failure to comply with such obligations shall not constitute a Default.

19.3. Notwithstanding clause 19.2, the Customer shall remain liable for the costs of those Services which are properly provided by the Provider prior to or during any Force Majeure.

20. Transfer and Sub-Contracting of Memorandum of Understanding

- 20.1. Either Party shall discuss any interest under this Memorandum of Understanding with the other prior to any transfer of obligations or sub contract of its duties under this Memorandum of Understanding

21. Amendments

- 21.1. This Memorandum of Understanding shall not be varied or amended unless such variation or amendment is agreed in writing by duly authorised representatives of the Provider and the Customer. Any such amendment shall specify all relevant consequential changes to this Memorandum of Understanding. Any such changes must be made in accordance with the procedures at Schedule 7.

22. Severability

- 22.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated, In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

23. Waiver

- 23.1. The failure of Provider or the Customer to insist upon strict performance of any provision of this Memorandum of Understanding or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Memorandum of Understanding
- 23.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 23.3. No waiver of any of the provisions of this Memorandum of Understanding shall be effective unless it is expressly stated to be a waiver and communicated to the other parties in writing.

24. Entire Memorandum of Understanding

- 24.1. This Memorandum of Understanding constitutes the entire understanding and agreement between the parties relating to the subject matter of this Memorandum of Understanding and incorporates all the respective rights and obligations of the parties relating to the subject matter of this Memorandum of Understanding and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, whether oral or in writing, provided that nothing in this Clause shall be deemed to seek to exclude liability for any fraudulent misrepresentation.

25. Publicity

- 25.1 The Provider shall not make any public statement relating to the existence or performance of this Memorandum of Understanding without the Customer's prior approval in writing, which shall not be unreasonably withheld.
- 25.2 The Provider and its sub-Providers (if any) shall not refer to the Customer in any advertisement without the Customer's prior written consent.
- 25.3 The provisions of this clause 25 shall apply during the continuance of this Memorandum of Understanding and after its termination howsoever arising, without limitation of time covered at clauses 3 and 13.

26. Corrupt Gifts and Payments of Commission

- 26.1 The Provider shall not do (and warrants that in entering this Memorandum of Understanding it has not done) any of the following (referred to in this clause as "Prohibited Acts"):
- 26.1.1 offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Agreement with the Crown, or for showing or not showing favour or disfavour to any person in relation to this or any other Agreement with the Crown;
- 26.1.2 enter into this or any other agreement with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the agreement is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Customer.
- 26.1.3 If the Provider, its employees, agents or any sub-Provider, or anyone acting on its or their behalf, does any of the Prohibited Acts or commits any offence as the case may be under the Bribery Act 2010 with or without the knowledge of the Provider, in relation to this or any other agreement with the Crown, the Customer shall be entitled:
- 26.1.3.1 to terminate this Memorandum of Understanding immediately by giving notice in writing and recover from the Provider the amount of any loss resulting from the termination;
- 26.1.3.2 to recover from the Provider the amount or value of any such gift consideration or commission; and
- 26.1.3.3 to recover from the Provider any other loss sustained in consequence of any breach of this clause, whether or not this Memorandum of Understanding has been terminated.

In exercising its rights or remedies under this clause, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the Prohibited Act.

27. Conflict of Interest

- 27.1 "Conflict of Interest" means a situation in which the Provider or a member of Provider's Staff

has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.

- 27.2 The Provider shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing this Memorandum of Understanding, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of this Memorandum of Understanding (whether the conflict existed before the award of this Memorandum of Understanding or arises during its performance), it shall immediately notify the Customer in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises, and shall furnish such further information as the Customer may reasonably require.
- 27.3 Where the Customer is of the opinion that a Conflict of Interest is not capable of being avoided or removed, the Customer may terminate this Memorandum of Understanding immediately by giving notice in writing and recover from the Provider the amount of any loss from such termination.

28. Discrimination and Human Rights

28.1 The Provider shall:

28.1.1 perform its obligations under the Contract (including those in relation to the Requirements) in accordance with:

28.1.1.1 the Equality Act (2010) and any other applicable equality Law (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation;

28.1.1.2 the Authority's equality and diversity policy available on the Authority website (www.nhsbsa.nhs.uk); and

28.1.1.3 any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

28.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

28.2 The Provider shall take all reasonable steps to secure the observance of clause 28.1 by all Provider Staff.

28.3 The Provider shall undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Customer to comply with its obligations under the Human Rights Act 1998.

28.4 Subject to clause 6 (Liability for Services), the Provider agrees to indemnify and keep indemnified the Customer against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Provider of its obligations under this clause 28.

Signed for and on behalf of **NHS BUSINESS SERVICES AUTHORITY**

By: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

Date: 04/11/2024

Signed for and on behalf of **NHS England**

[REDACTED]

Full Name: [REDACTED]

Job Title/Role: [REDACTED]

Date Signed: 19/02/2025

SCHEDULE 1 INTERPRETATIONS

"Controller"	has the meaning given in Data Protection Legislation and "Joint Controllers" has the meaning given in Article 26 GDPR;
"Data Protection Legislation"	the Data Protection Act 2018 (DPA), the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	has the meaning given in Data Protection Legislation;
"Data Subject Rights Request"	a request made by a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access his or her Personal Data;
"Default"	means any material or persistent breach of the obligations of a party to this Memorandum of Understanding, or any default, act, omission, negligence or statement of either party, its employees, agents or sub-Memorandum of Understandings in connection with or in relation to the subject matter of this Memorandum of Understanding and in relation to which such party is liable to the other, where such breach, default, act or omission has an adverse impact on the ability of the other to carry out its statutory function or to meet its financial budget;
"Designated Senior Officer"	means the person/s currently fulfilling the positions senior responsible officer specified in Schedule 6
"European Law"	European Union or European Member State law (as referred to in the GDPR) or such other law as may be designated in its place when England (whether with Scotland, Wales and/or North Ireland or not), leaves the European Union;
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	has the meaning given to it in Clause 19;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council);
"Individual"	means an employee, temporary worker, student/ apprentice or honorary contract;
"Memorandum of Understanding"	means this Memorandum of Understanding, consisting of the Clauses and Schedules;
"Personal Data"	has the meaning given in Data Protection Legislation;

"Personal Data Breach"	has the meaning given in Data Protection Legislation;
"Process"	has the meaning given in Data Protection Legislation and "Processed" and "Processing" shall be construed accordingly;
"Processor"	has the meaning given in Data Protection Legislation;
"Services"	means the services to be provided by the Provider under this Memorandum of Understanding as specified in Schedule 2;
"Service Charges"	means the charge levied by the Provider to the Customer for provision of the Services as agreed on an annual basis between the Parties or as and when an additional service is required and as specified in Schedule 4;

The masculine includes the feminine and the neuter; and

The singular included the plural and vice versa.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

Headings are included in this Memorandum of Understanding for ease of reference only and shall not affect the interpretation or construction of this Memorandum of Understanding.

References to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of this Memorandum of Understanding.

SCHEDULE 2: THE SERVICES

1. This Schedule 2 sets out the services agreed between the Provider and the Customer in order to ensure clarity around both the Services provided and the roles and responsibilities of all parties.
2. The Provider will be the direct point of contact on behalf of the Customer, with statutory authorities in respect of the application of regulations associated with the Services.
3. The Services to be provided by the Provider are:

Component	Description
Visa and Certificate of Sponsorship Checking Service	<ul style="list-style-type: none">• Receive and Review documentation received via NHS England Online Portal.• Carry out appropriate checks to validate Documentation provided within the Portal.• Submission of information to Home Office Sponsorship Management System (SMS)• Upload of Certificate of Sponsorship from SMS to NHS England Online Portal• Carry out appropriate checks to validate granted Visa/Sponsorship within the Portal• Appropriate quality checks at all stages.• Escalate complex cases.

SCHEDULE 3: CUSTOMER AND PROVIDER RESPONSIBILITIES

Part 1: Provider Responsibilities

The Provider will:

1. *Process Certificate of Sponsorship applications as per the Customers already established process.*
2. *Escalate any complex issues.*
3. *Manage and provide the people assign to work on the processing of applications.*
4. *Provide governance to oversee performance.*
5. *Will comply with all Data Protection Legislation and specifically that adequate protocols are in place in accordance with Part 3 of this Schedule 3 to ensure the security confidentiality and data protection of Personal Information*
6. *Coordinate with the Customer on the set up of this Service.*

Part 2: Customer Responsibilities

The Customer will:

1. *Ensure that their own operational procedures are kept up to date*
2. *Deliver appropriate training to staff involved in Processing.*
3. *Provide access to appropriate systems and processes.*
4. *Provide list of items to work weekly.*
5. *Act as escalation point.*
6. *Manage all inbound emails from applicants.*
7. *Will comply with all Data Protection Legislation and specifically that adequate protocols are in place in accordance with Part 3 of this Schedule 3 to ensure the security confidentiality and data protection of Personal Information.*

Part 3: Data Protection / GDPR Responsibilities

1. The Parties agree that they have the following roles, as defined by Data Protection legislation, in providing and receiving the Services: -

<i>Party</i>	<i>Role(s)</i>
<i>Customer</i>	<i>Data Controller</i>
<i>Provider</i>	<i>Data Processor</i>

2. The Data Controller (NHS England) and the Data Processor (NHSBSA) shall set out details of their Processing under this Agreement in the table below: -

<i>Requirement in Article 28(3) GDPR for a Processor</i>	<i>Details for this Agreement</i>
<i>The subject matter and duration of the Processing</i>	Certificate of Sponsorship application processing.
<i>Duration of the processing</i>	Each processing activity may only last for periods of a few days for changing records to a period of several months. However, the Processor will have access to Personal Data for the duration of the MOU and for a transition period thereafter to ensure a smooth exit of services, to be no more than 60 days.
<i>The nature and purpose of the Processing</i>	<p>The purpose of Processing Personal Data is to enable the Customer to effectively manage and maintain its Doctors in Training program and effectively manage Sponsorship applications in line with UK Legislation.</p> <p>The purpose of the processing is fully detailed in Schedule 2 (Services).</p>
<i>The type of Personal Data</i>	<p>Personal Data to be processed may include:</p> <ul style="list-style-type: none"> • Personal details including sensitive personal data • Family, lifestyle and social circumstances • Financial details • Employment and education details • Visual images, personal appearance and behaviour • Physical or mental health details

	<ul style="list-style-type: none"> • Case file information • Safeguarding checks • DBS Checks • Equality and Diversity declarations.
<i>The categories of Data Subjects</i>	<p>Data Subjects will include:</p> <ul style="list-style-type: none"> • Customer employees and applicants for Sponsorship. • Family members of Customer employees/applicants, include partners, children. • Other individuals' details held in the employees/applicants record; and • Medical Practitioner details.
<i>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</i>	<p>All data is being processed via Customer systems and Customer storage locations. Requiring no transfer of information. No data is to be held by NHSBSA systems.</p>
<i>The Controller's obligations and rights</i>	<p>The Controller is required to process Personal Data in order to meet its legal obligations to its employees, future employees, ex-employees and those applying for vacancies, to comply with legislation in relation to equal opportunities and employment. The Controllers will ensure any Personal Data is treated as confidential and complies with Data Protection Legislation.</p>

3. The Customer and the Provider shall record details of their responsibilities for Processing in the table below.

<i>Responsibilities under Article 82 Compensations & Liability</i>	<i>Details for this Agreement</i>
<i>Customer responsibilities for Processing</i>	<p>The Customer will provide to the Provider, as further described in Section 2 – The Services, details of:</p> <p>Processing Certificate of Sponsorship or</p> <p>Details of any temporary variations that affect any Personal Data held by the Provider and which requires the Provider to make amendments to, or change any processing activity, in relation to the Services.</p>
<i>Provider responsibilities for Processing</i>	<p>The Provider is required to process Personal Data in order to meet its legal obligations to its customer, the customers employees, future employees, ex-employees and those applying for vacancies, to comply with legislation in relation to equal opportunities and employment.</p> <p>The Provider will ensure any Personal Data is treated as confidential and complies with Data Protection Legislation.</p>

4. The Data Controller and the Data Processor shall act in a transparent manner to determine their respective responsibilities for compliance with the obligations under the GDPR, in particular as regards the exercise of the rights of the Data Subject and their respective duties to provide the information as referred to in Articles 13 and 14 GDPR. The Parties shall record the Controller / Processor arrangement between them, by populating all the tables within this Schedule 3, and may designate a contact point for Data Subjects and shall duly reflect the respective roles and relationships of the Parties as Controller and Processor vis-à-vis the Data Subjects.

<i>Transparency Requirement in Article 28(3) GDPR for a Processor</i>	<i>Details for this Agreement</i>
<i>Exercise of Data Subject rights (Article 15 to Article 22 - these refer to information rights of the individual)</i>	<p>The Provider will action these rights for the information it holds and pass on the request to the Customer as detailed in paragraph 1.3(l) to this schedule.</p> <p>The Customer will action these rights for the information it holds and pass on the request to the Provider as detailed in paragraph 1.3(l) to this schedule.</p>

<i>Duties to provide information under Article 13 and Article 14 (Privacy Notice)</i>	NHS England will provide a privacy notice on its website so that Data Subjects will know what is being shared between the Data Controller and the Data Processor.
<i>Obligations, relevant to the arrangement – each in a separate row of the table – this should also cover the responsibilities of each Party for the purpose of Article 34 and Article 82 GDPR</i>	<p>NHSBSA will inform NHS England of any subcontractors which it will use within this service. Use of subcontractors will be subject to approval by NHS England.</p> <p>NHS England reserves the right to assure privacy and security by design by auditing processes in place at NHSBSA.</p> <p>Any personal data breaches should be communicated to the Data Controller within 72 hours of the breach occurring. In accordance with Article 34 GDPR, the party identifying the breach will inform the other Party and agree who informs the Data Subjects. The relevant party's Data Protection Officer will be the person responsible for informing the Data Subjects and the ICO if appropriate.</p> <p>On termination of this agreement, personal data relating to the agreement should be returned to the Data Controller (NHS England). The Data Processor, once assured that the data has transferred to the Data Controller, will ensure that the personal data they hold is deleted from their systems within one month of the termination of the agreement.</p>
<i>Data Subjects right to compensation and liability</i>	Nothing within this MoU relieves either party of their own direct responsibilities and liabilities under GDPR.
<i>Contact point for Data Subjects (optional)</i>	The Data Protection Officers of the Data Controller and the Data Processor will be the contact points for Data Subjects.

5. The Parties agree to update their completed tables as necessary during the Term to reflect any changes in the arrangement. The completed tables (as updated from time to time) shall form part of this Agreement. The essence of the arrangement shall be made available to the Data Subject. The Parties acknowledge that irrespective of the terms of the arrangement set out in this Schedule 3, the Data Subject may exercise his or her rights under the GDPR in respect of and against the Data Controller and Data Processor.

SCHEDULE 4: SERVICE CHARGES AND PAYMENT TERMS

1. Charges

The Services outlined in this Memorandum of Understanding are procured as a contract for services delivered by the Provider charged as a monthly price.

Component	Description
NHS England Doctors in Training Certificate of Sponsorship and Visa Support Implementation	<ul style="list-style-type: none"> Service Implementation and process mapping
Component	Description
NHS England Doctors in Training Certificate of Sponsorship and Visa Support	<ul style="list-style-type: none"> Receive and Review documentation received via NHS England Online Portal. Carry out appropriate checks to validate ID, Visa and Certificate of Sponsorship Submission of information to Home Office Sponsorship Management System (SMS) Return processed and completed Visa and/or Sponsorship to NHS England

Where the Customer requests the Provider to undertake services that all outside the agreed scope of services as set out in Schedule 2, such as supporting organisational changes; where resource requirements are significantly different to those predicted; or where the Customer requires the Provider to operate outside of a standard services process (Additional Services), then the Provider will agree a resolution with the Customer in advance of any Additional Services being provided or further costs being incurred.

These Additional Services will be costed on the basis of required resource at the agreed day rates for 2024/2025 referenced in the table below.

Band	[REDACTED]
Band 2	[REDACTED]
Band 3	[REDACTED]
Band 4	[REDACTED]
Band 5	[REDACTED]
Band 6	[REDACTED]
Band 7	[REDACTED]
Band 8a	[REDACTED]
Band 8b	[REDACTED]
Band 8d	[REDACTED]

2. Direct cost recharges

In addition to the above charges for services delivered through this Memorandum of Understanding, the Provider shall also directly recharge the Customer for the actual cost of processing services undertaken on behalf of the Customer with a third party to enable processing of agreed services within the Memorandum of Understanding.

These third-party services include such items as pre-employment health screening, certificates of sponsorship and security checks as applicable. All such charges will be recharged at cost and will not be subject to an additional processing charge from the Provider.

Third party contract management is maintained by the Provider and agreed direct recharges for third party services are passed through from the Provider to the Customer for service rendered via the third party throughout the duration of the agreement.

Third party service costs are agreed for the duration of the contract. However, services and costs may be subject to change if agreements are renewed, or a service provider is changed with the provider on behalf of the customer.

3. Invoicing

The Provider will invoice the Customer the sum of the applicable component price for the charging period, plus the sum of unit charges incurred through any Direct Cost Recharges (Section 2 of Schedule 4) applicable 30 days following the end of the quarter.

SCHEDULE 5 REVIEW MEETINGS

Measurement of performance against criteria and targets will be undertaken as part of the contractual monitoring and review process.

1. Contract Management And Monitoring

The Provider will provide the Customer.

- *Monthly Review meeting*
- *Stand up Meetings to a frequency agreed between the Customer and Provider.*

SCHEDULE 6: AUDIT

1. The Customer's internal audit will not be conducted by Provider's auditors.
2. The Provider will provide information to the Customer on an annual basis regarding the relevant elements of its internal audit plan.
3. The Provider will report to the Customer, on an exception basis, any material issues identified in reports from its internal auditors, which are relevant to the Customer.
4. In order to ensure an efficient, integrated approach, it is expected that the Customers internal auditors will, wherever possible, place reliance on internal audit work undertaken by the Providers internal auditors.
5. The Customer will also formally report any issues or recommendations to the Provider, in connection with Customer Internal Audits.
6. Special internal audit reports may from time to time be necessary to address specific issues. Such special reports will be subject to negotiation and agreement between all relevant parties.
7. The Customer will provide a minimum of 5 working days' notice for any data required to support their own audit. The Provider will provide a maximum of 3 person days per audit. Any additional time requested will be chargeable as an Additional Service (see costs in Schedule 4) subject to the Provider having the available resource to allocate to audit activity.
8. The Customer will request data from the Provider via the agreed process.

SCHEDULE 7: CHANGE CONTROL PROCESS

1. The Provider will keep a Change Control Log which allows for unique internal numbering of change requests.
2. Where a change is identified a Change Request Form will be generated by the single point of contact (or nominated deputy) (the "Sending Party"). These will be authorised by Provider signatory role and/or the customer signatory role, as appropriate (depending on which Party requests the change).
3. The Change Request Form is then e-mailed by the Sending Party to the other party's single point of contact for progression (the "Receiving Party"). The receipt of the form will be confirmed by the Receiving Party to the Sending Party with details of the internal change request number allocated for use in future enquiries, and indicative timescales for completion of internal review by the Receiving Party.
4. After internal review (including additional associated costs) by the Receiving Party and any joint review required between the parties the Change Request will either be accepted or rejected by the Receiving Party. If the Receiving Party rejects the Change Request then the Receiving Party shall confirm the reasons for such rejection in writing to the Sending Party. If the Receiving Party accepts the Change Request then any required implementation controls and additional charges shall be agreed between the parties. Where such implementation controls include consequential amendments to this Agreement then such amendments shall be agreed in writing and signed by both parties and shall constitute a variation to this Agreement in accordance with clause 21.
5. On completion of implementation of the Change Request the parties shall agree a date for review of the implementation which will usually be the date of the next Management Meeting, but earlier if appropriate and agreed between the parties.
6. Progression of outstanding Change Requests will be reported at Management Meetings.






MOU Template

Final Audit Report

2024-11-04

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