

Agreement

between

Health Education England
(the Authority)

and

[North Devon Healthcare NHS Trust]
(the Lead Employer)

for the provision of Human Resources and Payroll Services

CONFIDENTIAL

Health Education England

Agreement on support for General Practice trainees

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Section 1

Form of Agreement

The Agreement is made on: (date)

between:

Health Education England, Blenheim House, Duncombe St, Leeds, LS1 4PL
(The Authority) or any successor body;

And

[North Devon Healthcare NHS Trust, North Devon District Hospital
Raleigh Park, Barnstaple, Devon EX31 4JB] (the Lead Employer)

Together referred to as “the Parties”

WHEREAS:

- A. Health Education England South West is a local office of the Authority;
- B. the Peninsula Postgraduate Medical Education Office is part of Health Education England South West and will manage the Agreement on behalf of the Authority;
- C. The address for notices to the Authority shall be: Peninsula Postgraduate Medical Education Office, Raleigh Building, Plymouth Science Park, Derriford, Plymouth, Devon PL6 8BY

IT IS AGREED THAT - The Form of Agreement, the Briefing Paper, together with Sections 2 to 6 inclusive are documents which collectively form “the Agreement”.

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Section 2

Terms and Conditions of the Agreement

2. Definitions and Interpretation

2.1 In this Agreement, unless the context otherwise requires the following words and expressions have the meanings respectively assigned to them:

- **Agreement** – means this Agreement including all Sections and Appendices;
- **Agreement Manager** - means the person(s) for the time being and from time to time appointed by the Lead Employer and/or the Authority to act as the duly authorised officer for the purposes of monitoring and/or managing the operational requirements for the purposes of this Agreement;
- **Agreement Period** – means the period commencing on the Commencement Date and terminating on the Termination Date;
- **Agreement Price** - means the price which the Authority shall pay the Lead Employer for the Services;
- **Authority** - means Health Education England or any successor body;
- **Authority Finance Lead** – means the person who for the time being is appointed by the Authority to manage the finance for this Agreement and to whom the Lead Employer sends the Schedule of Payment;
- **Authorised Officer** – means the person for the time being and from time to time appointed by the Authority to act as the Authority's duly authorised officer for the purposes of this Agreement;
- **Commencement Date** – means 1 April 2017;
- **Community Care Placement** – a training place provided by any Lead Employer in the community, other than in a GP practice such as in public health, hospice, clinic or community hospital.
- **Confidential Information** - means, in relation to a Party, all information (whether written, oral or in electronic form) concerning the business and affairs of that Party which the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement;
- **Contract Period** – means the period from 1 April 2017 up to and including 31 March 2020, together with any agreed extension;
- **Employment Costs** – means all and any claims, costs, expenses or liabilities which the Lead Employer shall incur or suffer arising directly from either the

employment of the trainees by the Lead Employer. For the avoidance of doubt this includes redundancy liability;

- **Financial Year** - means a year beginning on 1 April of any calendar year and ending on 31 March of the following calendar year;
- **NHS England South** – the geographically defined organisation responsible for the delivery of the NHS England’s duties in the South;
- **NHS England** – The NHS body responsible for managing the medical performers lists and for holding and making payments for service contracts to primary care providers from April 2013;
- **Party** - means a party to this Agreement and shall include its permitted assignees and successors in title.
- **Payroll Schedule** – means the names of the Trainees, plus their associated monthly salaries and expenses, in a Primary Care Placement;
- **PPGME** – means the Peninsula Postgraduate Medical Education Office;
- **Primary Care Placement** – a training place provided by any Training Provider in the primary care setting such as a GP practice.
- **Programme** – means one of the five postgraduate specialty training programmes in general practice or the broad based training programme overseen by the Authority;
- **Quarter** – means a calendar quarter and the word quarterly shall be construed accordingly, that is:
 - “Quarter 1” means April – June;
 - “Quarter 2” means July – September;
 - “Quarter 3” means October – December;
 - “Quarter 4” means January – March;
- **Schedule of Payment** – means the monthly Schedule sent by the Lead Employer to the Authority (to pay for the primary care placements and the Agreement Price)
- **Secondary Care Placement** – a training place provided by any Training Provider in the secondary care setting such as an acute hospital, a mental health hospital, or a community hospital.
- **Services** - means those activities which form part of this Agreement as set out in Section 3;

- **Trainees** – means trainees enrolled on the programme;
- **Training Provider** – any organisation other than the Lead Employer where a Trainee is receiving training under the terms of this Agreement.

Provision of the Services

2.2 The Lead Employer shall provide the Services as set out in Section 3.

Duration of Agreement

- 2.3 This Agreement will take effect for the duration of the Contract Period; subject always to the provisions of Clauses 2.32 to 2.37.
- 2.4 The parties may extend the Contract Period up to and including 31 March 2022 by the following procedure:
- 2.4.1 on or before 28 February 2019 the Authority gives written notice to the Lead Employer in accordance with clause 2.50 of its desire to extend the Contract Period;
- 2.4.2 on or before 30 March 2019 the Lead Employer gives written notice to the Authority in accordance with clause 2.50 that it agrees to such an extension.
- 2.4.3 the agreed extension shall be of not less than two NHS Years' duration.
- 2.5 For the avoidance of doubt, the decision to offer an extension to the duration of the Agreement shall be at the sole and absolute discretion of the Authority. The Authority's decision shall be informed by an analysis of the outcomes of the Agreement review process that has taken place between 1 April 2017 and 28 February 2019.

Resources

- 2.6 The Lead Employer shall ensure that throughout the Agreement Period and within the Agreement Price sufficient:
- 2.6.1 numbers of suitably qualified staff; and
- 2.6.2 physical resources, as appropriate, are available to provide the Services in accordance with the terms of this Agreement.
- 2.7 For the purposes of this Agreement the Lead Employer shall ensure it employs only persons who:
- 2.7.1 possess the appropriate qualifications, experience and skills to perform their duties to the standards required by this Agreement;

2.7.2 are skilled and competent in performing those duties.

Agreement Price and Payment Mechanism

2.8 The Agreement Price and Payment Mechanism are set out in Section 6.

Authorised Officer

2.9 The Authority shall appoint an Authorised Officer empowered to act on its behalf for all purposes connected with the provision of this Agreement and the implementation of this Agreement.

2.10 The Authority shall give notice to the Lead Employer of each subsequent appointment of an Authorised Officer.

2.11 The Authority shall ensure that the Authorised Officer shall be available for consultation by the Lead Employer on reasonable notice at any time during the Authority normal office hours.

2.12 Any notice, information or communication given or made by the Authorised Officer shall be deemed to have been given or made by the Authority.

Agreement Manager

2.13 The Lead Employer shall appoint a person to be the Agreement Manager who shall be the duly authorised representative of the Lead Employer for all purposes relating to this agreement.

2.14 The Lead Employer shall give notice to the Authority of each subsequent appointment of an Agreement Manager such notice to be given within five Business Days of the appointment.

2.15 The Lead Employer shall ensure that the Agreement Manager (or another person duly authorised to act on the Lead Employer's behalf for the purposes of this Agreement) shall be available for consultation by the Authority on reasonable notice at any time during the Lead Employer's normal office hours.

Agreement Review

2.16 Formal meetings to review the Agreement against the Quality Standards set out in Section 5 will take place on a bi-annual basis. One meeting per year will be attended by the Authorised Officer and the Agreement Manager; the second meeting will be attended by the Authorised Officer, the Agreement Manager plus the Lead Employer Director of Human Resources and the Lead Employer Director of Finance or their authorised representatives.

2.17 Dates will be set by mutual agreement with the Authorised Officer and the Agreement Manager.

2.18 The Authority shall administer the arrangements for the annual review.

Co-operation

2.19 The Authorised Officer and the Agreement Manager or another person duly authorised to act on the Lead Employer's behalf for the purposes of this Agreement will co-operate with each other in connection with the provision of the Services.

Unlawful Discrimination

2.20 The Lead Employer and the Authority shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment of that Act or analogous legislation which has been, or may be, enacted from time to time relating to discrimination in employment or discrimination in the delivery of public services. The parties agree to observe and comply with their obligations under the Human Rights Act 1998

2.21 The Lead Employer and the Authority shall take all reasonable steps to secure that all their servants, employees or agents and all sub-contractors employed in the performance of the Agreement do not unlawfully discriminate as set out in clause 2.20.

2.22 Both parties shall ensure trainees enjoy equal opportunity to receive Services regardless of any protected characteristic as defined in the Equality Act 2010 (other than a disability which would prevent that person from practising).

Dispute and Arbitration

2.23 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiation between the Authorised Officer and Agreement Manager or other authorised representatives.

2.24 Where such a dispute cannot be resolved between the Agreement Manager and the Authorised Officer and a party gives to the other party notice identifying a dispute ("Dispute Notice"), the Director of Human Resources of the Lead Employer (or any other senior officer as the Lead Employer may notify to the Authority) and the Postgraduate Dean of the Authority (or such other senior officer as the Authority may notify to the Lead Employer):

- Shall discuss the dispute as soon as reasonably possible with a view to resolving it and;
- if they are unable to resolve the dispute within 30 working days after the receipt by the other party of the Dispute Notice or within such longer period as the parties may agree the dispute shall be resolved in accordance with Clauses 2.25 and 2.26.

2.25 If the matter cannot be resolved through negotiation, the parties will, at the request of either party, attempt in good faith to resolve the dispute or claim through an agreed Alternative Dispute Resolution ("ADR") procedure. The performance of obligations under this Agreement shall not, save for the matter

in dispute, cease or be delayed by the application of such a procedure.

- 2.26 If the matter has not been resolved by the agreed ADR procedure within one month of the initiation of such procedure then the parties shall refer the unresolved dispute to a single arbiter acting as an expert agreed by both parties (to be appointed in the absence of agreement on the application of either party by the President for the time being of the Chartered Institute of Arbitrators).

Insurance and Liability

- 2.27 The Lead Employer shall hold and maintain during the Agreement Period such proper and adequate public liability, employer's liability, third party, occupier's liability and other appropriate insurance as are necessary to cover the liability of the Lead Employer in respect of:

- Personal injury or death to any person;
- Injury or damage to property real or personal.

Being injury or damage arising out of or connected with the performance by the Lead Employer of its obligations under the Agreement and arising on premises owned, controlled or for the time being in use by the Lead Employer, excluding for the avoidance of doubt approved training locations

- 2.28 The Lead Employer shall be liable for and shall indemnify the Authority against any liability, expense, loss, claim or proceedings whatsoever and howsoever which arise in connection with the provision of the services under this Agreement in so far as such liability, expense, loss claim or proceedings are due directly to any negligent act or omission of the Lead Employer or its staff.
- 2.29 The Lead Employer shall ensure that each trainee has purchased indemnity cover or is covered with the appropriate indemnity for the duration of the trainee's training period whilst in a practice setting or working for another training provider.
- 2.30 In the case of primary care placements, the Lead Employer shall work closely with NHS England South to ensure each trainee is maintained on a primary care medical performers' list for the duration of the trainee's training period.
- 2.31 In the event that the Lead Employer is in default of the obligations contained in Clause 2.29, the Lead Employer shall indemnify both the Authority and the relevant trainee against all and any claims, costs, expenses or liabilities which may be incurred or suffered arising from or in connection with the Lead Employer's default.

Default and Termination Provisions

- 2.32 Where the Lead Employer has failed to meet any requirements of the Agreement then (except where such failure amounts to serious or fundamental breach which is not capable of remedy) the Authority shall notify

them of such failure and shall specify the time within which the failure must be remedied by the Lead Employer, such time period to be reasonable considering all the circumstances of the case.

2.33 If the Lead Employer's failure remains un-rectified within the timescale allowed by the Authority under Clause 2.35, then the Authority shall be entitled to issue a default notice in writing to the Lead Employer. Such default notice shall state:

- The nature and details of the breach;
- What action the Lead Employer must take to remedy such breach;
- The time period in which such breach must be remedied to the satisfaction of the Authority, such time period to be reasonable considering all the circumstances of the case.

2.34 Where the Lead Employer fails to comply with two or more default notices within a period of six months (including those relating to the same breach) the Authority shall be entitled to terminate the Agreement immediately provided the breach is not being addressed under the dispute procedure in Clauses 2.23 to 2.26.

2.35 If the Lead Employer commits a serious and fundamental breach of the Agreement which is not capable of remedy, the Authority shall be entitled to terminate the Agreement immediately without notice.

2.36 In the event of termination by the Authority due to breach by the Lead Employer, the Lead Employer shall repay to the Authority any money which the Authority has paid relating to the period after the date of termination.

2.37 Payments would not be reimbursed for services which have not been carried out for which the Lead Employer would have been paid; inclusive of any salary costs or expenses.

2.38 The Parties recognise that in the event of a major National and/or Government policy change an earlier termination date may be mutually agreed, with a notice period of 6 months.

Audit

2.39 The funding and related operational HR activity will be subject to both the internal and external audit arrangements contained in the Lead Employer's Standing Orders/Financial Instructions.

2.40 The Lead Employer will action any agreed recommendations made by any internal or external audit reports, as appropriate.

Assignment and sub-contracting

2.41 The Lead Employer may not assign or subcontract the benefit or burden of this Agreement save as provided for herein unless otherwise agreed in writing between the parties. This Agreement will be binding on the successors of either party.

Rights of Third Parties

2.42 A person who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

Partnership and Agency

2.43 This Agreement shall not be interpreted as constituting a partnership between the parties, nor as constituting any agency between the parties or as otherwise entitling either party to bind the other for any purpose.

Complaints

2.44 The Lead Employer shall keep a record of all written complaints of whatever nature regarding any of the services provided by the Lead Employer and details of such complaints shall be provided to the Authority on request.

Confidentiality

2.45 All Parties shall at all times use their best endeavours to keep confidential, and ensure that their employees and agents keep confidential, any information in relation to the business and affairs of the other Parties. No Party shall disclose any such information except with the prior written consent of the other Parties. A disclosure by a Party in accordance with an Act of Parliament or legislation made under it or in compliance with a Court Order shall not be an actionable breach of confidence.

2.46 The obligations of each Party shall continue without limit in point of time but shall cease to apply to any information that is put into the public domain otherwise than by a Party breaching its obligations.

Data Protection

2.47 In carrying out its obligations under the Agreement, each Party shall comply in all material respects with all current data protection legislation, including the Data Protection Act 1998 ("the Act"). All parties accept that for the purposes of this Agreement, all are both a Data Controller and a Data Processor, as defined in the Act.

Variations to the Agreement

2.48 The Services shall be provided in accordance with the terms of this Agreement and any additions, variations or modifications shall not form part of

this Agreement unless specifically agreed in writing by the parties and signed by the Authorised Officer and authorised representatives of the Lead Employer;

Force Majeure

2.49 Neither the Authority nor the Lead Employer shall be liable for any default delay or for the consequences of any delay in performing any of its obligations under this Agreement if such delay is due to any factor whatsoever beyond its reasonable control resulting from act of God, governmental regulation, fire, war, terrorist activity, industrial dispute (not directly involving the employees of either party) or civil commotion. This is not an exhaustive list.

Warranty as to capacity

2.50 Each Party warrants and represents to the other that it has full power and capacity to enter this Agreement and that all the necessary actions have been taken to enable it lawfully to enter into this Agreement.

Notices

2.51 Any notice to a Party under this Agreement shall be in writing, but not by email, signed by or on behalf of the party giving it and shall be addressed to the Authorised Officer or Contract Manager as appropriate at the address for the relevant party set out above. All notices and other communications under this Agreement shall be made in writing and shall be deemed to have been communicated at the time of delivery if delivered personally, 48 hours after first class posting.

Enforceability and Severance

2.52 Any provision of this Agreement which is held invalid or unenforceable, shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.

Jurisdiction

2.53 The Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England.

Freedom of Information

2.54 Each party is responsible for complying with queries regarding freedom of information (FOI) and environmental information regulation (EIR) requests directed to their organisation in line with the relevant Acts or policies in practice. Each individual request must be dealt with on a case by case basis and the consequences of their decisions must be clearly explained to the individuals in writing by the party receiving the request.

2.55 Where information is held jointly, it is the responsibility of the organisation receiving the request to ensure they request promptly all relevant information

from the other parties in order to fully complete the request. Where one party receives a request meant for the other, such requests will be sent to the other party immediately and safe receipt confirmed (for example, via telephone or email response [excluding out of office]).

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SIGNED:

For the Lead Employer:

For the Authority:

Signature:

Signature:

.....

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Full Name:

Full Name:

.....

.....

Title or position held on behalf of
the Lead Employer:

Title or position held on behalf of
the Authority:

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Date:.....

Date:.....

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