

MEMORANDUM OF UNDERSTANDING

MADE BETWEEN

Health Education England

AND

NHS Leadership Academy as part of NHSE

Mary Seacole NHS Qualification

1. PARTIES

The Parties to this Memorandum of Understanding ("MOU") are:

- a) Health Education England of Blenheim House, Duncombe Street, Leeds LS1 4PL ("the Authority")
- b) NHS England (NHSE) acting through the NHS Leadership Academy as part of NHSE ("the Service Provider")

2. BACKGROUND TO THE MOU

The Trent and LNR Foundation Schools within Health Education England (HEE) wish to commission 25 places on the Mary Seacole course.

Offering a leadership qualification to Foundation Doctors helps them to understand the fundamentals of management from the start of their medical career.

By offering 25 places on this leadership course, those Foundation Trainees who have an interest in this area are supported with their development.

The Foundation Curriculum 2021 asks Foundation doctors to evidence their ability to manage and lead.

3. PURPOSE OF THE MOU

3.1 The purpose of the MOU is to commission 25 places on the Mary Seacole course.

3.2 This MOU is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from the provisions of the MOU. The Parties enter into the MOU intending to honour all their obligations.

4. COMMENCEMENT AND PERIOD OF OPERATION

4.1 This MOU shall take effect on **1st October 2022** and expire on **31 December 2023**.

5. WHAT THE AUTHORITY AND SERVICE PROVIDER WILL DO

5.1 Schedule 3 of this MOU details what the Authority and Service Provider will do.

6. PRICING OF THE SERVICE

6.1 The pricing for the provision of the service is contained in Schedule 4.

7. DATA PROTECTION

7.1 When handling HEE Data (whether or not Personal Data), the Organisation shall ensure the security of the data is maintained in line with the security requirements of HEE as notified to the Organisation from time to time.

7.2 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this MOU, the Parties acknowledge that the Organisation shall be

acting as a Processor on behalf of HEE as the Controller. The only Processing that the Organisation is authorised to do is listed in the Summary Form and may not be determined by the Organisation. The Organisation shall comply with any further written instructions with respect to Processing given by HEE and any such further instructions shall be incorporated into the table in the Summary Form. The Controller could be HEE and/or other parties and therefore all references to HEE in this clause 7 shall be interpreted to extend to any other Controller as if they were a party to this MOU.

7.3 The Organisation shall provide all reasonable assistance to HEE in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of HEE, include:

7.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;

7.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Organisation's Responsibilities;

7.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;

7.3.4 and the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

7.4 The Organisation shall, and shall procure that its agents, Sub-Processors and employees shall:

7.4.1 Process the Personal Data only in accordance with instructions from HEE (which may be specific instructions or instructions of a general nature as set out in this MOU, or as otherwise notified by HEE to the Organisation in writing from time to time) and the table set out in section 3 of the Summary Form, unless the Organisation is required to do otherwise by Law. If it is so required, the Organisation shall promptly notify HEE before Processing the Personal Data unless prohibited by Law;

7.4.2 Notify HEE immediately if it considers that any of HEE's instructions infringe the Data Protection Laws;

7.4.3 Ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the GDPR) which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

7.4.4 notify HEE immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing HEE with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

- a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
- b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
- c) describe the likely consequences of the Personal Data Breach; and
- d) describe the measures taken or proposed to be taken to address the Personal Data Breach;

7.4.5 co-operate with HEE and take such reasonable steps as are directed by HEE to assist in the investigation, mitigation and remediation of a Personal Data Breach;

7.4.6 not disclose the Personal Data to any Organisation Staff unless necessary for the provision of the Organisation's Responsibilities;

7.4.7 other than where specifically authorised under this MOU, not appoint any third-party sub-contractor to Process the Personal Data ("Sub-Processor") without the prior written consent of HEE. In all cases where a Sub-Processor is appointed:

- a) the contract between the Organisation and the Sub-Processor shall include terms which are substantially the same as those set out in this clause
Error! Reference source not found.;
- b) the Organisation shall provide HEE with such information regarding the Sub-Processor as HEE may reasonably require;
- c) the Organisation shall remain fully liable to HEE for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
- d) the use of the Sub-Processor shall be otherwise in accordance with clause 7.4

7.4.8 take reasonable steps to ensure the reliability and integrity of any Organisation Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Organisation's Responsibilities in the context of that individual's duties to the Organisation, and ensure that the Organisation Staff:

- a) are aware of and comply with the Organisation's obligations under this clause 7 together with any obligations pertaining to confidentiality or data protection which are set out in this MOU;
- b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
- c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by HEE or as otherwise permitted by this MOU; and
- d) have undergone adequate training in the use, care, protection and handling of Personal Data;

7.4.9 notify HEE immediately if it receives:

- a) from a Data Subject (or third party on their behalf):
 - I. a Data Subject Access Request (or purported Data Subject Access Request);
 - II. a request to rectify any inaccurate Personal Data;
 - III. a request to have any Personal Data erased or blocked;
 - IV. a request to restrict the Processing of any Personal Data;
 - V. a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or

VI. an objection to any Processing of Personal Data;

- b) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this MOU;
- c) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- d) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(each a "**Relevant Communication**").

7.4.10 taking into account the nature of the Processing, provide HEE with full cooperation and assistance (within the timescales reasonably required by HEE, and in any case within sufficient time for HEE to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Organisation or by HEE directly) including by implementing such technical and organisational measures as may be reasonably required by HEE and by promptly providing:

- a) HEE with full details and copies of the Relevant Communication (where received by the Organisation);
- b) HEE, on request by HEE, with any Personal Data it holds in relation to a Data Subject; and
- c) assistance as requested by HEE with respect to any request from the Information Commissioner's Office, or any consultation by HEE with the Information Commissioner's Office;

7.4.11 allow for audits (including inspections) of its data Processing activity by HEE or HEE's mandated Auditor, and if requested by HEE, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 7 and provide to HEE copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

7.4.12 cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this MOU, or (ii) the cessation of the Organisation's Responsibilities, and as soon as reasonably practicable thereafter, at HEE's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and

7.4.13 designate a data protection officer if required by the Data Protection Laws.

7.5 The Organisation shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of HEE (unless the transfer is required by EU or member state law to which the Organisation is subject, and if this is the case then the Organisation shall inform HEE of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).

7.6 In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 0, the Organisation shall, when requested by HEE, promptly enter into an agreement with HEE including or on such

provisions as the Standard Contractual Clauses and/or such variation as a regulator or HEE might require which terms shall, in the event of any conflict, take precedence over those in this clause 7, and the Organisation shall comply with any reasonable instructions notified to it in advance by HEE with respect to the transfer of the Personal Data;

- 7.7 Subject to HEE providing the Organisation with all information reasonably required by the Organisation to comply with this clause 7.7, the Organisation shall create and maintain a register setting out:

7.7.1 the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Organisation's Responsibilities; and

7.7.2 a general description of the technical and organisational security measures adopted by the Organisation to protect the Personal Data.

- 7.8 The Organisation shall use its reasonable endeavours to assist HEE to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this MOU in such a way as to cause HEE to breach any of HEE's obligations under the Data Protection Laws to the extent the Organisation is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

- 7.9 Both HEE and the Organisation shall comply with their respective obligations under the GDPR in relation to this MOU, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.

- 7.10 Both HEE and the Organisation shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to **The Network and Information Systems Regulations 2018** (NIS Regulations) if applicable to the Organisation. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, HEE may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Organisation's Responsibilities, and the Organisation shall comply with the terms of any such report.

- 7.11 HEE may, at any time on not less than 30 Working Days' notice, revise this clause 7 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this MOU).

- 7.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. HEE may on not less than 30 Working Days' notice to the Organisation amend this MOU to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 7.13 If following the date of this MOU:

7.13.1 any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the GDPR or from the NIS Regulations are published; or

7.13.2 the UK ceases to be a Member State of the European Union;

7.13.3 then HEE may require the Organisation to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.

8. REVIEW OF THE SERVICE

8.1 The Parties will meet/correspond on an annual basis under the leadership of the Authority to review the operation of the service, including review of the Authority required management information, and to agree any resultant actions.

9. CONTACT POINTS

9.1 Both Parties agree to nominate a representative to liaise with the other Party and be the primary point of contact in all matters concerning the operation of the contract. The names and contact details of the representatives are given in Schedule 2

10. VARIATION

10.1 This MOU, including the Schedules, may be varied by written agreement between the Parties.

11. TERMINATION

11.1 This MOU shall terminate on **31st December 2023**, unless extended or terminated by mutual agreement.

12. DISPUTE RESOLUTION

12.1 If the Parties are unable to agree a matter arising under the terms and clauses of this MOU, such dispute shall be referred to a more senior representative within their organisations to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Authority (but the chairperson shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairperson.

12.2 If the meeting(s) referred to in **12.1**, does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

13. CONFIDENTIALITY, FREEDOM OF INFORMATION AND TRANSPARENCY

13.1 There is an obligation under common law to treat personal information held by the Parties as private and confidential because it has been disclosed for a strictly limited purpose.

13.2 Each Party agrees to treat as confidential, and to continue in perpetuity to treat as confidential upon termination of this agreement, information relating to the other Party's technology, technical processes, business affairs, finances, employees or officers or confidential information relating to other individuals obtained in the course of delivering the MOU.

13.3 The Parties shall co-operate with each other in handling and disposing of requests made to either of them, which are the responsibility under the Freedom of Information Act 2000 of the other.

13.4 The Parties acknowledge that the Authority is subject to the Coalition Government's Transparency Policy and the Service Provider accepts that the Authority is to act on that policy.,

14. PUBLICITY

14.1 The Parties shall consult with each other before deciding whether to give any publicity to the matters covered by this MOU.

14.2 The Authority shall decide whether to publicise matters for which it has primary responsibility under the MOU. The Service Provider shall decide whether to publicise matters for which it has primary responsibility under the MOU.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Parties may use each other's logos for the purposes of delivering and promoting the services specified in the MOU provided such use is in line with the owner's guidelines.

15.2 Any other use of the logo or other intellectual property rights will require express permission in writing from the owner.

15.3 The Service Provider hereby assigns to the Authority all Intellectual Property Rights (IPR) owned by the Service Provider in any material which is generated by the Service Provider and delivered to the Authority in the performance of the Service. These shall include, but are not limited to, any manuals, guidelines, reports, databases that the Service Provider creates on the Authority's behalf. The Service provider shall waive all moral rights relating to such material.

16. NO PARTNERSHIP OR AGENCY

16.1 Nothing in this Memorandum of Understanding shall be construed as creating a partnership.

16.2 No party shall be deemed to be an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

16.3 Neither party shall have any liability to the other party for any redundancy costs arising either from delivery of the services or by the termination of the MOU, whether by the passage of time or any earlier termination.

17. LAW AND JURISDICTION

17.1 The Parties recognise that the Agreement is not a legally binding contract but nevertheless will honour, observe and perform as if it was. The Agreement shall be subject to English law and to the jurisdiction of the courts of England.

Signed for and on behalf of Health Education England

[Redacted]

.....

Name [Redacted]

Position [Redacted]

Date [Redacted]

Signed for and on behalf of the [name of Department/Organisation]

[Redacted]

Name [Redacted]

Position [Redacted]

Date [Redacted]

SCHEDULE 1 SECURITY AND DATA PROTECTION

The Authority is the Data Controller responsible for all personal information it collects for the purposes of the MOU. The Service Provider will act as Data Processor for the Authority under the terms of this MOU.

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The Data Processors will act only on instructions from the respective Data Controllers, and will ensure they have mechanisms in place to address the issues of physical security, security awareness and training, security management systems development, site-specific information systems security policy and systems specific security policies.

The Data Processors will comply with the obligations imposed on the Data Controllers by the Seventh Data Protection Principle of the Data Protection Act by taking appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Any request from an individual or a third party for access to personal data, or any complaint about the way in which personal data has been processed, will be referred to the respective Data Controller.

Any information extracted for statistical, planning, or research purposes can only be used if the identity of the individuals to whom it relates is completely anonymous.

SCHEDULE 2**CONTACT POINTS**

For the Authority

Name		
Office Address		
E mail address		

For the Service Provider

Name		
Office Address		
E mail address		

SCHEDULE 3 - Specification

1. Introduction

The Trent and LNR Foundation Schools within Health Education England (HEE) wish to commission approximately 25 places on the Mary Seacole course.

2. Background

Offering a leadership qualification to Foundation Doctors helps them to understand the fundamentals of management from the start of their medical career.

By offering approximately 25 places on this leadership course, those Foundation Trainees who have an interest in this area are supported with their development.

The Foundation Curriculum 2021 asks Foundation doctors to evidence their ability to manage and lead.

3. Scope of Contract

HEE are looking to commission 25 places on the Mary Seacole course.

4. Detailed Requirements

Functional Requirements

The Mary Seacole programme is six months long with 100 hours of online study, plus three behavioural workshops delivered locally (currently virtual delivery).

Learning is accessed through:

- The NHS Leadership Academy's virtual campus, which includes programme films, interactive content, discussion forums and online resources
- Three one day skills workshops working with expert facilitators delivered around the country

The programme is delivered in 12 units, each taking between five and ten hours of online study time:

- Units 1-8 covers leadership fundamentals and build on each other as the programme progresses
- Units 9-12 are flexible and can be taken at any point in the programme. These relate to the core management skills of: – Fundamentals of Finance – Recruitment and selection – Fundamentals of HR – Appraisals and annual review

Assessment is based on online activity, attendance to all three workshops, contributing to the online discussion forums throughout and submission of a 2,000 word assignment demonstrating how you've developed and applied your leadership. Successful completion will lead to an NHS Leadership Academy Award in Healthcare Leadership.

Mandatory Requirements

Programmes must be delivered and accessible to Foundation trainees in the East Midlands

- Providers must provide equipment and facilities to run these programmes including:
 - Faculty
 - Facilities and Resources
 - Delivery of Training
 - Accreditation of Faculty, Courses and Centres
 - Provider Governance
 - Courses must be evaluated and feedback provided to HEE
 - Administration and booking systems are to be managed as part of the programme and by the awarded trust.

5. Service Levels and Key Performance Indicators (KPIs)

The programme must be delivered in accordance with this specification, ideally with other multi-disciplinary delegates.

6. Contract Management and Review

Course provision and evaluation will be reviewed annually at contract review meetings.

7. Sustainability

No specific requirements.

8. General Data Protection Regulations (GDPR) and Privacy Impact Assessments (PIA) To be completed in accordance with HEE process.

9. Contract Period

This contract is intended to start October 2022 and end December 2023.

SCHEDULE 4 PRICING AND PAYMENT

	Mary Seacole course		FIRM PRICE
	Price Per Learner		
	Any other costs		
	Total Price		