

Dated

19<sup>th</sup> October 2020

**SERVICES AGREEMENT**

Between

**(1) South Warwickshire NHS Foundation Trust**

And

**(2) Health Education England**

Relating to:

The programme to recruit qualified nurses from across the world to come to England to train and work within NHS Hospital Trusts in furthering the Global Learners' Programme – Recruitment and Placement of Nurses

**SECTION ONE - FORM OF AGREEMENT**

This Agreement is made on: 19<sup>th</sup> October 2020

between: **SOUTH WARWICKSHIRE NHS FOUNDATION TRUST (Trust)**

Warwick Hospital  
Lakin Road  
Warwick  
Warwickshire  
CV34 5BW

and: **HEALTH EDUCATION ENGLAND (HEE)**

1<sup>st</sup> Floor  
Blenheim House  
Duncombe Street  
Leeds  
LS1 4PL

referred to individually as “a Party” and together as “the Parties”.

The Agreement commences on:

Day: 19 <sup>th</sup>	Month: October	Year: 2020
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(the “Commencement Date”)

and, unless terminated earlier in accordance with its other provisions, the Agreement remains in effect until:

Day: 31 <sup>st</sup>	Month: March	Year: 2024
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(the “Expiry Date”).

**IT IS AGREED THAT**

This Form of Agreement (Section One) together with the attached Terms and Conditions and Schedules 1 to inclusive (Section Two) are the documents which collectively form this “Agreement”.

Signed for <b>SOUTH WARWICKSHIRE NHS FOUNDATION TRUST</b>	
Title or position held on behalf of <b>SOUTH WARWICKSHIRE NHS FOUNDATION TRUST</b>	Head of Employment Services
Full Name	
Signature	
Date	22/10/2020

Signed for <b>HEALTH EDUCATION ENGLAND</b>	
Title or position held on behalf of <b>HEALTH EDUCATION ENGLAND</b>	Head of Corporate Management and Regional Development
Full Name	
Signature	
Date	23 <sup>rd</sup> October 2020

## SECTION TWO - TERMS AND CONDITIONS

### BACKGROUND:

- (A) Health Education England (**HEE**) was established for and is committed to the provision of high quality education and training for the development of medical and other healthcare professionals within England.
- (B) The Trust operates as an NHS Trust in England and has a need to employ additional Nurses.
- (C) HEE has been working for some time in developing what is referred to as the “Global Learners’ Programme” (**Programme**).
- (D) Pursuant to the Hub Services Agreement, HEE established a hub office based in England which would be operated by HEE to manage providers of suitably qualified candidates (being Nurses) to be employed by specific participating NHS Trusts in England as short-stay recruits (for a maximum period of three (3) years subject to current visa requirements) and provide administration and training services in connection with these activities.
- (E) The Provider is participating in the Programme and is working with HEE to source candidates to be promoted to NHS Trusts pursuant to the Programme, for such candidates to be employed directly by NHS Trusts as Nurses in England as part of the Programme.
- (F) As part of the Programme [and pursuant to the Hub Services Agreement] HEE has entered into the Spoke Agreement with the Provider.

### AGREED TERMS:

#### 1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

##### 1.1 Definitions

In this Agreement the following words and expressions shall, save where the context otherwise requires, have the following meanings:

**Agreed Purposes:** The sharing of personal data for purposes of HEE sourcing and recruiting candidates to be employed as nurses at NHS Trusts in England as part of the Programme and the NHS Trust employing the successful candidates.

**Agreement Year** means each period of twelve (12) consecutive Months from the Commencement Date (or a subsequent anniversary of it) whilst this Agreement remains in existence, save that the final Agreement Year may be such shorter period up to and including the date of expiry or early termination of the Agreement;

**Business Day** means any day which is not a Saturday, Sunday or public holiday in England;

**Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) of any Law or any amendment or variation to any Law or any judgement of a relevant court of Law which changes binding precedent in England and Wales in each case after the date of this Agreement;

**Commencement Date** has the meaning given to it in Section One – Form of Agreement above;

**Commission** means the sums payable by the Trust to HEE as set out in Schedule 2;

**Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time;

**Data Protection Legislation:** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law;

**Dispute Resolution Procedure** means the dispute resolution procedure detailed in clause 13;

**Expiry Date** has the meaning given to it in Section One – Form of Agreement above;

**FOIA** means the Freedom of Information Act 2000;

**Force Majeure** has the meaning given in clause 24;

**Good Industry Practice** means using standards, practices, methods and procedures conforming to the Law and exercising that standard of skill, care and diligence which would reasonably be expected of an appropriately qualified, skilled and experienced person in the provision of services similar in nature to the Services;

**HEE Services** means the services to be procured by HEE to be provided by the Provider;

**Hub Services Agreement** means the agreements entered into by HEE with quality assured suppliers;

**Intellectual Property Rights** means any and all patents, trademarks, service marks, domain names, design rights, utility models, inventions, know how, trade and business names, copyrights and rights in databases and any other similar rights or obligations subsisting anywhere in the world (whether registered or not) for the full duration of such rights including extensions and renewals, and including the goodwill in the same;

**Law** means:

- (a) any Act of Parliament or the Welsh Assembly, any statutory instrument or other subordinate legislation of either parliament or any exercise of the Royal Prerogative;
- (b) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
- (c) any applicable guidance direction or determination or NHS requirements with which HEE is bound to comply, to the extent that the same are published and publicly available; and
- (d) any applicable judgement of a relevant court of law which creates binding precedent on England and Wales,

in each case, in force in England and Wales;

**Losses** has the meaning given in clauses 8.2 and 15.4;

**Month** means a calendar month (and the term Monthly shall be construed accordingly);

**NHS** means the National Health Service for England and Wales;

**NHS Trust** means any NHS Trust or NHS Foundation Trust established from time to time and operating anywhere in England;

**NMC** means the Nursing & Midwifery Council in the UK;

**Nurse** means a suitably qualified candidate identified through the Programme by the Provider to be employed by the Trust initially as a health care support worker and then as a qualified nurse (subject to suitable training and NMC registration requirements having been met);

**OSCE** means an objective structured clinical examination;

**Permitted Recipients:** The parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement,

**Provider** means a quality assured provider with an agreement to provide services to HEE

**Quality Framework** means the Quality Framework as amended from time to time a copy of which is set out in Schedule 1;

**Regulatory Body** means the relevant validating, accrediting and regulatory body which sets, monitors and maintains standards for the relevant profession Nurses are required to be registered with (as applicable), including, without limitation the NMC;

**Remedial Action Plan** has the meaning given in clause 13;

**Services** shall mean, where the context permits, the Trust Services and the HEE Services;

**Shared Personal Data:** the personal data to be shared between the parties under clause 1.1 of this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a. data subjects – candidates
- b. type of personal data - name, address, date of birth, NI, number, telephone number, qualification details/certificates, passport details.

**Spoke Agreement** means the agreement entered into between HEE and the Provider pursuant to which HEE procures the provision of services by the Provider;

**Term** shall have the meaning set out in clause 2.1;

**Trust Services** means the services to be provided by the Trust as set out in more detail in Schedule 3 Part A;

**UK** means the United Kingdom of Great Britain and Northern Ireland.

## 1.2 Interpretation and Construction

In the Agreement, unless the context otherwise requires:

- 1.3 Words importing any gender include any other gender, and words in the singular include the plural and vice versa.
- 1.4 Clause and Schedule headings are inserted for convenience only and shall have no legal effect. Reference in this Agreement to any clause or Schedule without further designation shall be construed as a reference to the clause or Schedule to this Agreement, and in the event of any conflict between a provision of a clause and a Schedule, then the clauses of the Agreement shall prevail.
- 1.5 References to any statute or statutory provision in this Agreement shall be deemed to refer to those provisions as replaced, amended, extended or re-enacted from time to time whether by statute or by directive or regulation (which is, in the case of a directive or regulation, intended to have direct application within the UK and has been adopted by the Council of the European Communities) and all statutory instruments or orders made pursuant to it.
- 1.6 A reference to a statute or statutory provision includes:
  - 1.6.1 any subordinate legislation (as defined in Section 21(1) of the Interpretation Act 1978) made under it;
  - 1.6.2 any repealed statute or statutory provision which it re-enacts (with or without modification); and
  - 1.6.3 any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it.
- 1.7 Where consent or approval of a Party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing.
- 1.8 Any reference to a Party shall include a reference to any successor in title or any organisation or entity which has taken over its function or responsibilities and its permitted assigns.
- 1.9 All references to this Agreement include (subject to all relevant approvals) a reference to this Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## 2. COMMENCEMENT AND TERM

This Agreement shall take effect on the Commencement Date and shall, unless terminated earlier in accordance with its other provisions or the general Law, continue for twelve (12) Months after the Commencement Date (“**the Initial Period**”). After the end of the Initial Period, the Agreement shall then continue (unless terminated earlier in accordance with its other provisions or the general Law) until such time as either Party gives the other not less than one (1) Months’ notice of termination, such termination to take effect on an anniversary of the Commencement Date (the Initial Period and any subsequent period of the Agreement being known together as “**the Term**”).

## 3. CO-OPERATION

The Parties agree to co-operate in good faith at all times with regard to their respective obligations under this Agreement, and with regard to the provision of the Trust Services and

the Provider Services in furtherance of the Programme hereunder and to agree upon acceptable working protocols moving forward.

#### **4. WARRANTIES**

4.1 HEE shall procure that the Provider warrants to the Trust that:

4.1.1 all Nurses put forward by them pursuant to this Agreement have successfully completed all mandatory procedural steps set out in Schedule 1; and

4.1.2 all information supplied by the Provider in respect of any Nurse proposed to be employed by the Trust is accurate and up to date.

4.2 Until such time as the Provider is able to evidence to the reasonable satisfaction of the Trust that the Provider can comply with the warranty set out in clause 4.1 then no Nurse will be entitled to work as Nurses as part of the Programme in England.

#### **5. SERVICES**

##### **Trust Services**

5.1 The Trust shall provide the Trust Services set out in Schedule 3 Part A in line with the expectations set out in Schedule 3 Part B:

5.1.1 in accordance with the terms of this Agreement;

5.1.2 with all due skill, care and diligence using appropriately experienced, qualified and trained personnel;

5.1.3 in accordance with Good Industry Practice;

5.1.4 in compliance with the Law; and

5.1.5 subject to clause 5.3, otherwise in accordance with the reasonable requests of the Provider.

5.2 In the event of any conflict or inconsistency between any of the requirements set out in clauses 5.1.1 to 5.1.5 (inclusive), the Parties will discuss such conflict or inconsistency with a view to resolving the same; each Party shall continue to provide all Services to each other which are not in dispute.

5.3 The Trust shall not be obliged to comply with any instructions from the Provider under clause 5.1.5 which:

5.3.1 do not comply with the Law; or

5.3.2 will or are likely to require the Trust to incur additional costs in complying with such instructions (save where such costs can be recovered by the Trust through a variation agreed pursuant to the provisions of this Agreement).

##### **HEE Services**

5.4 HEE shall procure the provision by the Provider of the HEE Services at all times:

5.4.1 in accordance with the terms of this Agreement;

5.4.2 with all due skill, care and diligence using appropriately experienced, qualified and trained personnel;

5.4.3 in accordance with Good Industry Practice;

5.4.4 in compliance with the Law; and

5.4.5 subject to clause 5.3, otherwise in accordance with the reasonable requests of the Trust and/or HEE in terms of any agreed standards to which the HEE Services are required to be supplied from time to time.

- 5.5 In the provision of the HEE Services, HEE shall use reasonable endeavours to procure that the Provider complies with any agreed Key Performance Indicators agreed between the Parties from time to time.

## **6. PAYMENTS**

- 6.1 HEE shall be entitled to issue its invoice to the Trust for the Commission at any time after HEE receives a corresponding invoice from the Provider pursuant to the terms of the Spoke Agreement.
- 6.2 The Trust agrees, subject to compliance by HEE with the provisions of clause 5.5, to pay to HEE the Commission (or such of it that remains outstanding) in accordance with the provisions set out in Schedule 2 in each case within thirty (30) days of the date of HEE's invoice.
- 6.3 HEE shall use reasonable endeavours to procure that the Provider ensures that each Nurse understands the payment obligations they will each be liable for upon signing a contract of employment with the Trust, as which are set out in more detail in the financial worksheet set out in Schedule 2 Part B.
- 6.4 All sums payable by the Trust to HEE under this Agreement are expressed in and are to be paid in pounds sterling (£) and are exclusive of VAT, which shall, where applicable, be paid in addition at the rate in force at the due time for payment subject to the relevant person supplying a valid VAT invoice to the other.

## **7. UNLAWFUL DISCRIMINATION**

- 7.1 Each Party shall ensure that in carrying out its obligations under this Agreement, it shall comply, and it shall procure that all of its employees, agents and subcontractors comply, with the provisions of the Equality Act 2010 or any statutory modification or amendment made thereto from time to time or of any similar 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.
- 7.2 Each Party shall use reasonable endeavours to ensure that all Nurses enjoy equal opportunity to receive education and training opportunities regardless of any protected characteristic as defined in the Equality Act 2010 (other than a disability which would prevent that person from practising).

## **8. LIABILITY AND INSURANCE**

- 8.1 The Trust shall ensure that it has in place at all times in respect of each Nurse employed pursuant to this Agreement and throughout the term of any Nurse employed by them pursuant to or in connection with the Programme appropriate professional medical insurance or other indemnity cover for all activity they perform under or in connection with the operation of this Agreement.
- 8.2 Without prejudice to its liability to the Trust for breach of any of its obligations under this Agreement, HEE shall procure that the Provider shall be liable for and shall indemnify both HEE and the Trust against any and all liability, loss, damage, costs, expenses, claims or proceedings whatsoever (**Losses**) incurred or paid by HEE and/or the Trust in respect of any claim against HEE and/or the Trust, arising under any statute or otherwise in respect of:

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

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

arising out of any act or omission or breach of this Agreement by the Provider save to the extent caused by any act or omission or breach of this Agreement by HEE and/or the Trust.

8.3 No Party excludes or limits its liability for:

8.3.1 death or personal injury arising as a result of the negligence of that party or any of its officers, employees or agents;

8.3.2 fraud or fraudulent misrepresentation; or

8.3.3 any other liability which cannot be excluded or limited by reason of law.

8.4 Subject to clause 8.3 above and save in respect of the indemnities at clauses 8.2 and 15.5 (liability in respect of which shall remain unlimited), in no event shall either Party be liable under this Agreement for any special, incidental, indirect or consequential loss or damage of any kind howsoever arising in respect of this Agreement or actions connected herewith whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

8.5 Subject to clauses 8.3 and 8.4 above and save in respect of the indemnities at clauses 8.2 and 15.5 (liability in respect of which shall remain unlimited), each Party's maximum aggregate liability in each Agreement Year under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise will in no circumstances exceed two (2) times the aggregate Commission paid or payable by the Trust to HEE in the Agreement Year during which such liability arose or five million pounds (£5,000,000) whichever amount is the greater.

## **9. VARIATION**

The terms of this Agreement shall not be varied except where variations are agreed in writing and signed by or on behalf of each of the Parties.

## **10. NOVATION, ASSIGNMENT AND SUB-CONTRACTING**

10.1 The Trust and HEE hereby acknowledge and agree that this Agreement shall be binding on, and shall inure to the benefit of, the Trust and HEE and their respective successors in title and permitted transferees and assigns.

10.2 In the case of either Party, its successors shall include any Party to whom that Party (and / or such governmental or regulatory authority as may be involved), transfers its property, rights and liabilities, upon that Party ceasing to exist or upon its status changing or it being reorganised or upon its functions being altered, and references to Parties, shall be construed accordingly. For the avoidance of doubt, in the event the Trust, or any successor body, ceases to exist, the provisions of the NHS Act 2006 (or any successor legislation) in relation to residual liabilities including, without limitation, sections 70 and 71 thereof, shall apply.

10.3 Neither Party may assign, novate, transfer, sub-contract, or otherwise dispose of its rights or obligations under this Agreement in whole or in part, without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, such consent shall be permitted to require HEE to impose upon the Provider obligations no less onerous than those agreed to by HEE pursuant to this Agreement.

10.4 Should this Agreement be so novated in accordance with clause 10.3, both Parties shall enter into a Deed of Novation, as will the assignee.

## **11. TERMINATION**

11.1 Either Party may terminate this Agreement at any time after the expiry of the Initial Period and without further liability to the other (save as specifically stated in it) on giving not less than one (1) Months' written notice of its intention to do so.

11.2 Either Party may terminate this Agreement on notice in writing to the other on the occurrence of any one or more of the following events:

11.2.1 if the other Party commits a material breach of this Agreement and such breach is not capable of being remedied within one (1) month of a notice in writing requesting its remedy;

11.2.2 if the other Party commits a persistent breach of this Agreement (which for the avoidance of doubt shall mean any non-material breach which is repeated more than four (4) times within any Agreement Year); and/or

11.2.3 the other Party is in receipt of a quality report from any Regulatory Body which has material adverse implications for the provision of any of the Services, where a Remedy Action Plan has not been agreed and enforced.

11.3 Either Party may terminate this Agreement at any time and without further liability to the other (save as specifically stated in it) on giving not less than thirty (30) days written notice of its intention to do so if any Change in Law or policy is made which has the effect of making this Agreement impossible, impractical or uneconomic for either Party to continue to perform and be engaged with.

11.4 The termination of this Agreement for whatever reason shall be without prejudice to any rights or liabilities which have accrued prior to the date of termination, and shall not affect the validity of any provision of this Agreement which expressly or by implication is intended to remain in force following its expiry or earlier termination (including, without limitation, clauses 3, 4, 6, 7, 8, 12, 13, 14, 15, 16, 18, 19, 20 and 26.

## **12. CONSEQUENCES OF TERMINATION**

12.1 Unless otherwise agreed between the Parties, if, following termination there are any Nurses remaining subject to contracts of employment with the Trust, this Agreement shall remain in full force and effect in relation to such Nurses until such time as their contracts of employment have expired in accordance with their respective terms or a comparable alternative has been organised and agreed by the Trust and HEE.

12.2 In the event of termination or expiry of this Agreement no further Nurses shall be allocated to be employed upon contracts of employment with the Trust under or otherwise pursuant to the Programme and upon the terms of this Agreement.

12.3 In the event of early termination of this Agreement, HEE shall be required to share such information as the Trust reasonably deems relevant with any successor organisation(s) subject only to any obligations of confidentiality included within the Agreement.

12.4 In the event of expiry or termination of this Agreement:

- 12.4.1 each Party shall immediately return to the other all of that other Party's information and other property (save to the extent that same may be required to perform residual obligations upon it);
  - 12.4.2 any unpaid invoices shall immediately become due and payable and any amounts for which an invoice has not been submitted may be invoiced immediately (the invoices being payable upon demand);
  - 12.4.3 both Parties shall co-operate fully to ensure an orderly handover in relation to all aspects of the Services to alternative providers (if any) and shall at all times act in such a manner as not to adversely affect the delivery of the Services or the obligations of the Parties under this Agreement.
- 12.5 The Parties shall cooperate in the period immediately prior to expiry or termination of the Agreement to ensure that all obligations relating to the Agreement and its expiry / termination have been and continue to be complied with.

**13. DISPUTE AND REMEDIATION**

- 13.1 During any dispute arising between the Parties, it is agreed that the Parties respectively shall continue provision of the Services (unless either of the Parties requests in writing that it does not do so).
- 13.2 In the case of any dispute arising out of or in connection with this Agreement, the Trust and HEE shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and following the procedure set out below before considering commencing court proceedings.
- 13.3 If any dispute arises out of this Agreement either Party may commence formal inter-Party resolution of the dispute acting reasonably and in good faith in doing so. Level 1 of the management levels set out below will commence at the request, in writing, of either Party. Respective representatives of each Party as set out in the table below shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.

Level	HEE representative	Trust representative
1	Deputy Director, Global Engagement Directorate	Head of Employment Services
2	Director, Global Engagement Directorate	Head of HR
3	Director of Finance	HR Director

- 13.4 If the procedure set out above fails for whatever reason to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution (CEDR); or (b) if agreed in writing by the Parties, with any other recognised alternative mediation organisation, using the model procedures of CEDR or the alternative mediation organisation, as the case may be.
- 13.5 Where a Party is in breach of its obligations under this Agreement, the Parties shall co-operate to draw up a remedial action plan (**Remedial Action Plan**) which shall include actions to be taken and timescales to be met. The Party in breach of its obligations shall comply with the Remedial Action Plan.
- 13.6 Nothing in this clause shall remove a Party's rights to terminate the Agreement, nor to seek emergency injunctive or other relief if it considers such action is necessary to protect its legitimate rights or interests.

## 14. CONFIDENTIAL INFORMATION

- 14.1 Each Party undertakes that it shall not at any time during the Term, and for a period of five (5) Agreement Years after its expiry or termination disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 14.2.2.
- 14.2 Each Party may disclose the other Party's confidential information:
- 14.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this Clause 14.2; and
- 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Agreement.

## 15. DATA PROTECTION

- 15.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the Parties as data controllers. Each Party acknowledges that one Party (the Data Discloser) will regularly disclose to the other Party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 15.2 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within thirty (30) days of written notice from the other Party, give grounds to the other Party to terminate this Agreement with immediate effect.
- 15.3 **Particular obligations relating to data sharing.** Each Party shall:
- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - (b) give full information to any data subject whose personal data may be processed under this Agreement of the nature such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - (c) process the Shared Personal Data only for the Agreed Purposes;
  - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;

- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the European Economic Area unless the transferor:
  - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
  - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or
  - ( ) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

**15.4 Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other Party about the receipt of any data subject access request;
- (c) provide the other Party with reasonable assistance in complying with any data subject access request;
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Party wherever possible;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the other Party or the other Party's designated auditor; and
- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

**15.5 Indemnity.** Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying Party, its employees or agents, provided that the indemnified Party gives to the indemnifying Party prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## **16. INTELLECTUAL PROPERTY**

16.1 Each Party acknowledges that all legal and beneficial interest in any Intellectual Property Rights in any document, information, report, licence, text, graphics, data, computer programme, website or other electronic media, and any other materials or thing, and any and all works which are developed or created by or on behalf of the other Party in connection with the performance of this Agreement are, and shall remain, the property of that other Party (or its licensors, as applicable).

16.2 Each Party acknowledges that all legal and beneficial interest in any Intellectual Property Rights in any document, information, report, licence, text, graphics, data and any other materials or thing, and any and all works which are developed or created jointly by the Parties whilst giving effect to this Agreement are, and shall remain, joint property of the Parties. Each Party shall have the irrevocable right free of charge to use such joint property independently of the other in such Party's normal business operations. If either Party wishes to permit a third party to use such joint property, it shall seek the other Party's prior written consent (not to be unreasonably withheld or delayed) to grant a licence to such third party to enable it to exploit the said joint property and any income which either derives shall be shared between the Parties as they agree at the time or, failing any such agreement, shall be shared equally.

16.3 Each Party hereby grants the other a non-exclusive, royalty-free, world-wide licence to use such of that Party's Intellectual Property Rights as are necessary for the other Party to perform this Agreement or any equivalent subsequent agreement between the Parties, but solely for this purpose. This licence shall endure for the duration of this Agreement and any subsequent agreement between the Parties with the same subject-matter.

## **17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to the Agreement shall not have the right to enforce any terms of it which confer a benefit on it (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

## **18. LAW AND JURISDICTION**

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.

## **19. PARTNERSHIPS**

19.1 Nothing contained in this Agreement shall be construed so as to constitute either Party to be the agent of the other.

19.2 This Agreement shall not operate so as to create a partnership or joint venture of any kind between the Parties nor operate so as to create a relationship of employer and employee or principal and agent.

## **20. AUDIT ACCESS**

For the purpose of:

- 20.1 the examination and certification of the Trust's accounts and records for and relating to this Agreement; or
- 20.2 so as to measure the economy, efficiency and effectiveness with which the Trust has used its resources in relation to the subject matter to this Agreement; or
- 20.3 the examination by HEE of the Trust's protocols and practices;

the Trust shall permit the appropriately authorised audit body or their authorised contractors to examine such documents relating to the provision of the Services (or the operation of the Agreement generally) as they may reasonably require which are owned, held or otherwise within the control of the Trust and the Trust shall produce such oral or written explanations as it considers necessary.

## **21. ADVERTISEMENTS AND MARKETING**

Unless otherwise agreed between the Parties during the subsistence of this Agreement, no disclosure, announcement, circular advertisements or publications or any form of marketing or public relations exercise in connection with the subject matter or the terms of this Agreement or the existence of this Agreement and the Parties to it or them shall be made by or on behalf of a Party to this Agreement without the approval in writing of the other Party.

## **22. NOTICES AND SERVICE**

22.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left or sent:

- 22.1.1 by hand; or
- 22.1.2 by registered post; or
- 22.1.3 by facsimile

to the duly authorised representative of that Party or such other person, address or fax number as they may from time to time designate by written notice to the other for such purpose.

22.2 Subject to clause 22.4 any notice or other information given by post under clause 22.1 above which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing the same was so posted; and proof by way of statutory declaration of personnel involved that the envelope containing any such notice or information was properly addressed, and sent by registered post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

22.3 Subject to clause 22.4 any notice or other information sent by facsimile transmission shall be deemed to have been duly given on the date of transmission, provided that a confirming copy thereof is sent by first class recorded pre-paid post to the other Party at its principal address within twenty four (24) hours after transmission.

22.4 Any notice or other information received or deemed by virtue of this clause 22 to have been received by the recipient Party on a day which is not a Business Day shall instead be deemed to have been given on the next following Business Day.

### **23. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together shall have the same effect as if each Party had signed the same document.

### **24. FORCE MAJEURE**

No Party will be liable for delay or for the consequences of any delay in performing any of its obligations under this Agreement if such delay is due to any cause whatsoever beyond its reasonable control resulting from act of God, government regulation, fire, war, pandemics, epidemics, terrorist activity, civil commotion or industrial dispute (not directly involving the employees of either Party) (**Force Majeure**) but nothing in this clause shall limit the obligations of either Party to use its reasonable endeavours to fulfil its obligations.

### **25. WARRANTY AS TO CAPACITY**

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

### **26. PREVENTION OF CORRUPTION**

26.1 No Party shall offer or give or agree to give to the other or its staff or agents, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other contract or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other such contract.

26.2 Both Parties shall comply at all times with the Bribery Act 2010 and shall not do, or permit to be done, anything that constitutes an offence under that Act or which might put the other Party in the position of committing an offence under that Act.

26.3 A breach of clause 26.2 by either Party shall not be capable of remedy and will give rise to the right to terminate this Agreement.

### **27. ENTIRE AGREEMENT**

Unless otherwise stated in this Agreement, this Agreement constitutes the entire understanding between the Parties in relation to its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No Party has relied on any warranty or representation except as expressly set out in this Agreement.

**SCHEDULE 1**

**Global Learners Programme Brochure**

**Provided separately and can be obtained on request**

## SCHEDULE 2

### PART A

#### COMMISSION & FEES PAYABLE BY THE TRUST

The Trust shall pay to HEE, in respect of each Nurse, for HEE to pay corresponding invoices from the Provider, the following Commission:

- A sum equivalent to twelve percent (12%) of the Nurse's Band 3 starting salary (net of any other entitlements) in respect of each Nurse who successfully (and legitimately) arrives in England as a candidate to be employed by the Trust..
- A sum equivalent to twelve percent (12%) of the Nurse's Band 5 starting salary, subtracting what has already been paid upon arrival in England (as part of the Programme) (within thirty (30) days) of the Nurse's qualification as at least a Band 5 Nurse by the Trust.

### PART B

#### Global Learners Programme Financial Framework

EXPECTED COSTS	NHS Nurse Notes Trust			
IELTS exam	£	155		
NMC stage 1 - CBT	£	83		
NMC Application		£ 140		
NMC Part 2 - OSCE exam	£	794		
Travel and accommodation for OSCE exam	£	225		
NMC registration fee	£	153	Paid by the nurse when in the UK	
Certificate of Sponsorship	£	199		
Immigration Skills Charge payable to UK Government	£	3,000		
Visa (3 year costs paid in year 1)	£	232	Paid by HEE and invoiced to the Trust by HEE when Nurse arrives in UK	
Flight to the UK	£	550		
Airport transfer on arrival	£	30		
Accommodation Support / settling package	£	1,200	3 months paid accommodation on arrival	
Fee A (per Service Level Agreement)	£	2,368	Charged to Trust when Nurse arrives in UK	
Fee B (per Service Level Agreement)	£	621	Charged to Trust when Nurse passes their OSCE	
Visa cost refund	-£	232	£ 232	Can be recharged to the Nurse in small monthly installments after they have passed their OSCE if the Trust so wishes
<b>Total Cost</b>		<b>£ 8,987</b>	<b>£ 763</b>	
ADDITIONAL POTENTIAL COSTS	NHS Nurse Trust			
OSCE 2nd attempt	£	397	Trust to pay on behalf of nurse and recoup from Nurses salary	
OSCE 3rd attempt	£	397	Trust to pay on behalf of nurse and recoup from Nurses salary	
POEA	£	185	Only applicable to recruitment from Philippines	
Health Insurance	£	150	Only applicable to recruitment from Philippines	
Return flight to home country	£	550	Only applicable to recruitment from Philippines and if the nurse completes 3 year programme	
Total additional potential costs recouped from nurse	-£	794	£ 794	OSCE 2nd and 3rd attempt
<b>Total additional potential cost</b>	<b>£</b>	<b>885</b>	<b>£ 794</b>	
<b>Total potential cost</b>		<b>£ 9,872</b>	<b>£1,557</b>	

## SCHEDULE 3

### PART A TRUST SERVICES

#### TO INCLUDE INDUCTION TRAINING

##### Content

###### *Working and Living in the UK*

This module will cover the practicalities of working and living in the UK including but not limited to; personal healthcare, schooling, banking, housing and local services. This module will also cover the UK Border Agency immigration regulations and responsibilities of visa holders. Emphasis will be placed on communication skills and use of colloquial English including regional variation.

###### *Health in the UK*

This module will focus on an introduction to the practice of healthcare in the UK including the demographics of disease, patient expectations, decision making, cultural differences in health care, roles and responsibilities of the organisations involved in health and social care, and their application to delivery of medical practice.

###### *Introduction to the NHS*

Learning here will include the structures and function of the NHS and how the organisations contribute to the care of a patient and how to navigate their processes, clinical governance in NHS Trusts including need for audit, information governance management of complaints, raising concerns, statutory responsibilities around prescribing and death certification, the role of the Coroner. Comprehensive mandatory training will be provided through a comprehensive e-learning package and local training Focus also will be placed on the role of the multi-professional team and the specific roles of the Consultant, junior doctor, nursing staff and the primary healthcare teams. Sessions will be provided within primary care to promote understanding of the partnership working between primary and secondary care.

###### *NMC Registration regulations*

This module will include full and comprehensive training to prepare the nurse for the OSCE examination.

###### *Observation of Clinical and Professional Practice*

This will be undertaken in practice in the NHS Trusts to which the Nurse will be allocated for their initial training.

###### *Simulation High Fidelity*

Simulation will be used to supplement clinical teaching and to support the acquisition of procedural skills with an understanding of the role Human Factors in ensuring high quality safe patient care.

###### *Training in the NHS*

This module will detail the system of training in the NHS, the role of the NMC, the responsibilities of Nurses in training, the role of the educational and clinical supervisors, study leave, pastoral support

EWTR rotas, New Deal and monitoring and completion of training. Academic English support will also be provided.

## PART B

### Expectations

In addition to the delivery of the Services as specified in this Service Level Agreement the Trust can expect HEE to:

- Respond to all correspondence from the Trust within 2 working days
- Provide access to the Applicant Tracking System (ATS) for as many users as the Trust requires
- Provide an initial ATS training session and any ongoing user support as required
- Provide ongoing guidance and support with the Global Learners Programme (GLP), Nursing & Midwifery Council (NMC) and UK Visa & Immigration (UKVI) processes
- Escalate relevant issues within the NHS, Department of Health, NMC and UKVI as appropriate

HEE expect the Trust to:

- Work with HEE to arrange interviews at the earliest mutually convenient opportunity
- Update the ATS as candidates progress through the recruitment process
- Outcome the interviews on ATS within 2 working days of the interviews being held and issue offer letters via ATS within 5 days of the interview being held
- Facilitate the arrival of the applicant within 26 weeks of the date of interview, including:
  - Processing Pre-Visa checks in a timely manner and alerting HEE at the earliest opportunity to any issues
  - Issuing Certificates of Sponsorship (CoS) as soon as possible
  - Agreeing arrival date with candidates and arranging flights/accommodation in a timely manner
- Respond to requests from HEE for the supply of information in a timely fashion
- Keep the GLP team updated on risks or issues which may impact on the process

Expected timescales to achieve arrival within 26 weeks are presented overleaf. These timescales can be significantly quicker for those candidates who have already passed their CBT and for those who have already passed their CBT and received their NMC Decision Letter/email.

Timescales for NMC application checking/decision and wait for UK Visa appointments are shown as 'worst case' and in reality usually occur quicker.

	Week																									
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Interviews held	Yellow																									
Outcomes/Offer Letters issued	Yellow																									
Candidate accepts offer		Maroon																								
Candidate applies to NMC		Maroon																								
NMC Considers Application		Blue	Blue	Blue	Blue	Blue																				
Candidate Prepares for CBT Test		Maroon	Maroon	Maroon	Maroon	Maroon																				
Candidate books CBT Test							Maroon																			
Candidate sits CBT Test											Maroon															
Trust undertakes pre-visa checks		Yellow																								
NMC issues Decision Email to candidate												Blue														
Trust signs off pre-visa checks												Yellow														
Trust issues COS													Yellow													
Candidate applies for Visa														Maroon												
Candidate has Visa interview																		Maroon								
Candidate receives Visa																				Maroon						
Trust books flights																				Yellow						
4 week window for candidate to travel																					Maroon	Maroon	Maroon	Maroon		

	Candidate action
	Trust action
	NMC action