

NHS ENGLAND SECONDMENT AGREEMENT

Secondee:	{applicanttitle} {applicantfirstnames} {applicantfamilyname}
Substantive Employer':	[Name of organisation]
Position with NHS England:	{offerjobtitle}
Start Date of Secondment:	{bookedstartdate}
End Date of Secondment:	[End Date]
NHS England region for provision of services	{offersite}
Hours or PAs to be Provided under this Agreement:	{offerworkingperioddesc}
Supervisor:	{linemanagerusername}

THIS AGREEMENT is made BETWEEN:

1. NHS England, ('**NHS England**'); and
2. The Secondee as detailed above (the '**Secondee**')

A copy of this agreement has been or will be provided to the Secondee's Substantive Employer by NHS England.

1. Definitions

- 1.1. **'Start Date'** means the start date of the Secondment set out in the above table;
- 1.2. **'End Date'** means the end date of the Secondment set out in the above table;
- 1.3. **'Secondment'** means the secondment of the Secondee by the Substantive Employer to NHS England on the terms of this Agreement
- 1.4. **'Secondment Period'** means the period from the Start Date to the End date, or to the date of termination of this Agreement if terminated earlier than the End Date in accordance with the terms of this Agreement.
- 1.5. **'Employment Contract'** means the contract of employment between the Substantive Employer and the Secondee.
- 1.6. **'Confidential Information'** shall include, but is not limited to, commercially sensitive information and personal information about NHS England's staff or others.
- 1.7. **'Data Protection Legislation'** means the General Data Protection Regulation (EU) 2016/679 ("GDPR"), Data Protection Act 2018 ("DPA"), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ("Data Protection Regulations") to the extent currently in force and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or any successor to the GDPR, DPA, Data Protection Regulations or Privacy

and Electronic Communications Regulations) and the applicable version at the relevant time of any guidance or codes of practice issued by the Information Commissioner's Office from time to time;

- 1.8. 'Services' means the services to be provided by the Secondee as described in the job description provided, or as amended from time to time following engagement with the secondee
- 1.9. 'Supervisor' means the person named as Supervisor in the above table or any person substituted by NHS England during the Secondment Period.
- 1.10. 'NHS Education Contract' the agreement between NHS England and the Substantive Employer that includes the provision of the Secondment.

2. Secondment

- 2.1. The Secondee will be seconded to NHS England to provide the Services in accordance with this Agreement and the Secondee agrees to being seconded on this basis. The relevant terms between NHS England and the Substantive Employer regarding the Secondment are set out in the NHS Education Contract.
- 2.2. The Hours or PAs to be provided under this Agreement by the Secondee are set out in the above table. However, the Secondee may be required to work such additional hours as are necessary for the proper performance of the Services.

3. Duration of Secondment

- 3.1. The Secondment will commence on the Start Date above and shall continue until:
 - 3.1.1. The End Date; or
 - 3.1.2. The date that the Secondment is terminated in accordance with clause 9, if earlier.
- 3.2. The Start Date is subject to:
 - 3.2.1. the Secondment Agreement being signed by the Secondee and NHS England; and
 - 3.2.2. The Secondee ensuring that the Hours or PAs to be provided under this Agreement are factored into their job plan and/or contractual arrangements with their Substantive Employer.

4. Services

- 4.1. The Secondee agrees to provide the Services to NHS England in accordance with the terms of this Agreement and the Secondee agrees to accept the Supervisor's view and opinion as to which activities the Secondee should undertake as part of the Services.

5. Location

5.1. The Secondee will work in the region indicated in the above table or such locations as may be reasonably agreed or required by NHS England.

5.2. The Secondee shall not be required to work outside the United Kingdom.

6. Secondee's Employment

6.1. During the Secondment, the Substantive Employer remains the Secondee's employer and their Employment Contract shall remain in force. Nothing in this Agreement is intended to be construed or to have effect as creating any relationship of employer and employee between NHS England and the Secondee.

6.2. The Secondee will cooperate with the Substantive Employer to make the necessary changes to the terms of the Employment Contract and their job plan so that it can second the Secondee to NHS England to provide the Services and meet the Secondee's obligations in accordance with the terms of this agreement and the Secondee agrees and accepts those changes.

6.3. At the end of the Secondment, the Secondee will remain employed by the Substantive Employer. Any consequential adjustments needed to the Secondee's Employment Contract and/or job plan would remain the responsibility of the Substantive Employer and the Secondee.

7. Management during the Secondment

7.1. NHS England shall have day-to-day control of the Secondee's activities to the extent required to ensure delivery of the Services under this Agreement. However, the Secondee shall continue to report to the Substantive Employer for all matters relating to their employment.

7.2. During the Secondment Period, the Secondee will remain subject to the Substantive Employer's policies and procedures including but not limited to disciplinary, grievance, capability and absence.

7.3. The Substantive Employer will remain responsible for the management of sickness absence and the Secondee will be responsible for reporting sickness absence to the Substantive Employer and informing the Supervisor.

7.4. The Substantive Employer will remain responsible for the management of annual leave. Annual leave dates are subject to the approval of NHS England and the Substantive Employer. The Secondee will be responsible for seeking approval of annual leave dates from NHS England and the Substantive Employer.

7.5. The Secondee agrees to adhere to NHS England's policies and procedures and standards in relation to business conduct as are drawn to the Secondee's attention during the Secondment Period and the Secondee agrees to do so.

7.6. All documents, manuals, hardware and software provided for the Secondee's use by NHS England, and any data or documents (including copies)

produced, maintained or stored on NHS England's computer systems or other electronic equipment (including mobile phones), remain the property of NHS England and must be returned to NHS England at the end of the Secondment Period. Failure to do so within a reasonable period may result in NHS England requiring the Secondee to pay for replacements.

8. Remuneration

- 8.1. During the Secondment, the Substantive Employer shall continue to pay the Secondee's Salary and any other contractual benefits, expenses and make any deductions required by an employer.
- 8.2. The Substantive Employer will receive funding for the Secondment directly from NHS England under the NHS Education Contract. All such payments are subject to the terms of that agreement.
- 8.3. No direct payments will be made by NHS England to the Secondee for remuneration, travel, subsistence or other expenses incurred in performing the Services.
- 8.4. NHS England has a duty to provide assurance for all off-payroll engagements (including secondments) that the Secondee is correctly paying any income tax and National Insurance. Following any reasonable request from NHS England, the Substantive Employer will provide any necessary information to provide assurance to NHS England that all tax and National Insurance obligations have been met in respect of the Secondee, as the Substantive Employer remains responsible for the deduction and payment of these on behalf of the Secondee.

9. Identity and Right to Work checks

- 9.1. Under the NHS Education Contract, the Substantive Employer has warranted that:
 - 9.1.1. The Secondee has the right to work in the United Kingdom;
 - 9.1.2. Identity and right to work checks have been completed for the Secondee;
 - 9.1.3. The Substantive Employer holds evidence of the completion of identity and right to work checks in respect of the Secondee; and
 - 9.1.4. If the Secondee's right to work in the United Kingdom is conditional on any matter, the Secondee's right to work in the United Kingdom is not affected by the Secondee entering into this Agreement.
- 9.2. If, during the Secondment Period, the Substantive Employer or the Secondee becomes aware that the Secondee does not or may not have the right to work in the UK, they must inform NHS England immediately.
- 9.3. The Substantive Employer will, on request by NHS England, provide copies of the evidence of the identity and right to work checks held by the Substantive

Employer, and the Secondee agrees that the Substantive Employer may do so.

- 9.4. In the event that the Secondee is no longer legally entitled to work or remain in the UK, the Secondment will automatically terminate without notice.

10. Professional Registration

- 10.1. If Professional registration is required to carry out the Services, and the Secondee warrants that the Secondee holds the required professional registration.
- 10.2. The Secondee must ensure that registration is up to date and to provide evidence on NHS England's request. Failure to maintain registration could lead to termination of this Agreement.
- 10.3. If the Secondee become aware during the Secondment that any professional registration required to perform the Services has lapsed, may lapse or is or may become subject to warnings or conditions, they are obliged to inform NHS England as soon as practically possible.

11. Termination

- 11.1. The NHS England may terminate this Agreement at any time by giving 1 months' notice in writing.
- 11.2. NHS England may terminate the Secondment immediately and without further liability if:
- 11.2.1. The Secondee persistently fails to efficiently and diligently carry out the reasonable instructions of NHS England;
- 11.2.2. The Secondee is guilty of any gross or serious misconduct;
- 11.2.3. The Secondee's professional registration has lapsed or is subject to warnings or conditions;
- 11.2.4. The Secondee has been unable or will be unable, by reason of sickness or incapacity other than for reason of maternity or shared parental leave, to attend work for NHS England for 20 working days (pro rata for a part-time Secondee). In such circumstances, the Secondee will return to their role with the Substantive Employer and the Substantive Employer will be responsible for the management of their absence in accordance with their duties as the Secondee's employer;
- 11.2.5. The Employment Contract ends; or
- 11.2.6. The Secondee no longer has eligibility to work within the UK.
- 11.3. Upon the termination or expiry of this Agreement, the Secondee shall deliver to NHS England all the documents (including correspondence, notes, memoranda, plans, drawings, other documents or property or goods or

products of whatsoever nature) made or compiled by, or delivered to the Secondee during the Secondment Period and concerning the business, finances, or affairs of NHS England. For the avoidance of doubt, it is hereby declared that all property and rights in all such documents, property, goods or products shall at all times be vested in NHS England.

12. **Liability and Indemnity**

- 12.1. NHS England will ensure that for health, safety and welfare purposes the Secondee is treated to the same extent and in the same manner as it required for its own employees in accordance with the relevant domestic and European legislation for the time being in force in England and Wales. During the Secondment, the Secondee will follow the relevant health and safety rules and procedures of NHS England.
- 12.2. NHS England has Public Liability Insurance which will cover the Secondee while they are on the NHS England's premises, on NHS England's business or working for the benefit of NHS England against accidental injury.
- 12.3. Under the NHS Education Contract, the Substantive Employer has agreed to indemnify NHS England in relation to its acts or omission or the acts or omissions of the Secondee. A copy of the NHS Education Agreement can be provided by NHS England on request.
- 12.4. The Substantive Employer shall be responsible for consulting with the Secondee and will be responsible for all associated costs if the Secondee's substantive post becomes redundant during the term of the Secondment.

13. **Inventions and Intellectual Properties**

- 13.1. The Parties foresee that the Secondee may make inventions or create other intellectual property in the course of providing the Services to NHS England.
- 13.2. In this respect, the Parties agree that the rights to inventions or other intellectual property made or created by the Secondee in the course of this Secondment will belong to NHS England. The rights to inventions or intellectual property made or created by the Secondee in the course of duties performed for the Substantive Employer belong to the Substantive Employer.

14. **Data Protection**

15. The Secondee agrees to comply with any policy of NHS England in relation to the treatment of personal data.
16. NHS England acknowledges that it acts as an independent data controller in respect of any personal data processed in the course of the Secondment. Data subjects may include the Secondee and employees or agents of the Substantive Employer or NHS England ("**Data Subjects**"). Data categories may include, amongst other items, name and contact details for the purposes of facilitating the Secondment.

17. NHS England will process personal data relating to Data Subjects in accordance with and to the extent permitted by Data Protection Legislation in order for NHS England to perform its obligations under this Agreement or to pursue its legitimate interests. Personal data relating to the Data Subjects may be kept by NHS England electronically or in hard copy format. NHS England will process personal data in accordance with its Privacy Policy

18. NHS England agrees to comply with the Data Protection Legislation in the processing of personal data and, with reasonable notice, provide on request to the other party evidence of such compliance.

19. **Confidentiality**

19.1. Under the NHS Education Contract the Substantive Employer has agreed with NHS England to ensure that Confidential Information is held securely. A copy of the NHS Educational Contract can be provided on request from NHS England.

19.2. The Seconded shall:

19.2.1. keep any Confidential Information relating to the Substantive Employer or NHS England that the Seconded obtains as a result of the Secondment secret;

19.2.2. not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the Substantive Employer or NHS England;

19.2.3. use their best endeavours to ensure that no person gets access to such Confidential Information from the Seconded; and

19.2.4. inform the Substantive Employer or NHS England immediately upon becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

19.3. NHS England reserves the right to monitor telephone calls, emails and the use of social media in circumstances that may warrant such action.

20. **Raising Concerns**

20.1. During the Secondment, if the Seconded has serious concerns relating to the activities or the functions of NHS England where, due to malpractice, fraud, abuse or other inappropriate acts/omissions, the interest of others or the organisation itself is at risk, then they should report this matter under NHS England's Raising Concerns Policy. A copy of this policy is available from NHS England's intranet or can be provided on request.

21. **Conflict of Interest**

21.1. The Seconded must declare any controlling or significant financial interest held by them or any close relative or associate of them in any organisation (e.g. private company, public sector organisation, voluntary organisation)

which may compete for a contract to and/or supply either goods or services to NHS England during the Secondment Period. The interest that gives rise to a conflict may be direct or indirect and, in particular, a conflict may relate to the interests of someone who is connected to them as well as to their own personal interests. All such interest must be declared to the Supervisor, in writing, either on commencement of the Secondment or upon acquisition of the interest.

- 21.2. The Secondee must declare any role with NHS England that involves the oversight of a training placement in which they have any such commercial or other interest.. The restriction applies to the Secondee in a personal or professional capacity and also to any organisation in which the Secondee holds a controlling or significant financial interest (e.g. private company, partnership).

Signatories to this agreement:

Lisa Wilson
Director of HR&OD

NHS England

Date: {current_date}

On behalf of NHS England (NHS England)

I acknowledge receipt of my terms of secondment and accept the terms and conditions set out therein. I confirm that I have agreement from my substantive employer to enter into this arrangement and that my contract of employment and job plan have been adjusted with my employer for the duration of this secondment or at termination in accordance with the conditions set out in this agreement and those referenced in the NHS Education Contract to which my employer is party to.

Signed:	
Print Name:	
Date:	

Secondee
