

Dated

2022

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**(1) NORTHAMPTONSHIRE HEALTHCARE NHS  
FOUNDATION TRUST**

**- and -**

**(2) LEICESTERSHIRE PARTNERSHIP NHS TRUST**

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**MEMORANDUM OF UNDERSTANDING  
FOR JOINT ROLES**

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**THIS MEMORANDUM OF UNDERSTANDING** is made on the  
2021

[DATE] December

**BETWEEN:**

- (1) **NORTHAMPTONSHIRE HEALTHCARE NHS FOUNDATION TRUST** of St Mary's Hospital  
London Road, Kettering, NN15 7PW ("**NHFT**")
- (2) **LEICESTERSHIRE PARTNERSHIP NHS TRUST** of Bridge Park Plaza, Bridge Park Road,  
Thurmaston, Leicester, LE4 8PQ ("**LPT**")

**Each a "Party" and together the "Parties"**

**BACKGROUND:**

- (A) NHFT and LPT have been in a 'buddy' arrangement since 2019. Because of this arrangement we have been able to work together on a range of initiatives including staff programmes, quality improvement work, strategy planning and more. Each organisation has embraced the opportunity to collaborate on projects to the benefit of our staff and those we care for and work with.
- (B) From April 2021, we have agreed to create a group arrangement for both of our trusts to work within. As part of the group arrangement, the Trusts have worked to make several joint appointments and explore other innovative workforce arrangements between the Trusts.
- (C) This Memorandum of Understanding is intended to set out the principles by which the Trust are operating in relation to those joint appointments and in the event of liabilities arising in respect of the joint appointments.

**NOW IT IS HEREBY AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Memorandum of Understanding the following words and expressions shall have the following meanings:

**Agreed Form** means a form of document agreed by the parties;

**Business Day** means a day other than a Saturday, Sunday or bank holiday in England;

**Commencement Date** means the date the Memorandum of Understanding is signed by the Parties, or on the last date that it is signed if the dates are different

**Confidential Information** means information, data and any material of any nature which either Party or Relevant Staff may receive or obtain in connection with the operation of this Memorandum of Understanding and:

- (a) the release of which is likely to prejudice the commercial or other interests of the other Party; or
- (b) is otherwise provided and/or received on the understanding that it is to be held in confidence;

**Data Protection Legislation** means (i) the Data Protection Act 2018 (ii) UK GDPR, and (iii) all applicable Law about the processing of personal data and privacy, including but not limited to the common law of confidentiality;

**Employee Emoluments** means all employment related outgoings including salaries, wages, bonus or commission, holiday pay, expenses, pay supplements, national insurance and pension contributions and any liability to taxation;

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

**Intellectual Property Rights** means any registered or unregistered patents, trademarks, service marks, trade names, copyright (including but not limited to rights in computer software and in websites and in any training material, rights in databases, rights in both registered and unregistered designs, know-how and all and any other confidential information);

**Joint Roles** shall mean a collaborative appointment or working arrangements used to engage or employ individuals into Positions;

**Personal Data** shall have the meaning given to it in the Data Protection Legislation;

**Positions:** positions whether at Board or other level within either NHFT or LPT or across both parties as part of the group working arrangements which are appropriate for consideration for Joint Roles;

**Shared Intellectual Property Rights** shall have the definition set out in Clause 12.3;

- 1.2 The headings in this Memorandum of Understanding shall not affect its interpretation.
- 1.3 In the event and to the extent only of any conflict between the Clauses and Schedules to the Memorandum of Understanding, the Clauses shall prevail.
- 1.4 In the Memorandum of Understanding the clauses, other than clause 3 are intended to be legally binding.

## **2 COMMENCEMENT AND DURATION**

- 2.1 This Memorandum of Understanding will take effect on the Commencement Date and will continue unless terminated in accordance with Clause 9 (Termination).
- 2.2 Before either Party gives notice under clause 9 they shall discuss and resolve any concerns, and to devise any required exit strategies to minimise the risks of such a termination
- 2.3 The Parties shall undertake an annual review of operation this Memorandum of Understanding and agree any amendments as may be required.

## **3 JOINT ROLES AGREEMENT PRINCIPLES**

- 3.1 When determining whether to create Joint Roles the Parties shall consider as appropriate whether:
  - 3.1.1 the collaboration on that Joint Role will support the Parties or group working arrangement as a whole to work more effectively, efficiently and economically.
  - 3.1.2 the Joint Role will support the delivery of each Trust's strategic objectives with respect to group working arrangements;
  - 3.1.3 the Joint Role will assist the Parties to work together in a unified, integrated, patient-focussed culture.
  - 3.1.4 the Joint Role draws upon the existing capability and respects the position of each Party.

- 3.2 The Parties shall develop effective working practices to work collaboratively to identify solutions, eliminate duplication of effort and mitigate risk arising out the Joint Roles. The Parties shall agree in each case appropriate appointment processes for each Joint Role.
- 3.3 The Parties shall seek to make appointments to Joint Roles on an Agreed Form of contract reflecting the nature of the employment arrangement for that Role.

#### **4 RESPONSIBILITIES**

- 4.1 Each Party shall remain individually responsible for ensuring that it has the appropriate workforce and staffing resources to adequately meet its own requirements. Nothing in this Memorandum of Agreement and no Joint Appointment to a Role made either before or after the Commencement Date shall make one party liable to the other for any staff resourcing issues faced by the other. The purpose of this agreement is to facilitate joint working where appropriate through Joint Appointments, not to make either Trust responsible for the other.
- 4.2 Each Party shall act in good faith when complying with its respective obligations arising under or in connection with this Memorandum of Understanding and provide such cooperation and assistance as may reasonably be required by the other Party for the successful operation of group working arrangements and Joint Appointments.

#### **5 GOVERNANCE**

- 5.1 Joint appointments will only be made to Roles with the recommendation of the “*Joint Working Group*”, with oversight and approval undertaken by each organisation’s Nomination and Remuneration committee.

#### **6 JOINT ROLES**

- 6.1 Before making a Joint Appointment to an agreed Joint Role, it must be determined:
- 6.1.1 What form of employment is to be used (joint employment, employment by a single Party and secondment or such other method of employment or engagement as the Parties may determine) for each Role and which Party’s policies and procedures (other than concerning management of the individual under clause 7.2) shall apply to that Joint Appointment;
- 6.1.2 What access to each Party’s premises, IT or other infrastructure shall be granted to the individual (and how such access shall be granted);
- 6.1.3 The division of liability for the Employee Emoluments and any other liabilities (including redundancy payments, other damages for injury to feelings or personal injury and own or third party legal costs) falling on a Party as a result of or arising out of an individual being appointed to the Joint Role (which shall be presumed to be 50/50 division unless otherwise agreed in writing); and
- 6.1.4 Whether the Joint Appointment is intended to be to a short-term role, or a permanent position, and if short term, what shall occur to the individual so engaged at the end of the appointment.
- 6.2 The Party employing an individual to a Role shall undertake all usual pre-employment checks in accordance with its policies including and Disclosure and Barring Service Checks, rights to work in the UK and confirm to the other Party that no concerns have arisen to that appointment and the individual is fit and proper person to undertake the Role.
- 6.3 Each Party shall provide any necessary induction to any individual appointed to a Role.

- 6.4 The Parties shall agree for any individual any training that is required for the Role, who shall provide or secure the provision of that training.
- 6.5 Either Party may immediately require that an individual is denied access to its Premises or otherwise prevented from having access to IT systems. Where either party requires such suspension of access, it shall immediately notify the other Party of this and the basis for the action.
- 6.6 The responsibility for termination will rest with the employing Party. The employing Party will ensure that they consult with the other Party at the commencement of and during any process and prior to a decision to terminate. Either Party may require a Joint Role to be terminated on not less than 6 months' notice.
- 6.7 Following the service of a notice requiring the termination of a Joint Role by a non-employing Party, an employing Party may decide to retain or redeploy the individual, but nothing in this agreement shall require the Trust to create a new role or otherwise offer employment to such individual. Where such retention or redeployment occurs, the non-employing Party shall cease to be liable for any liabilities arising after the date of redeployment or retention.

## **7 GRIEVANCES, DISCIPLINARY AND LIABILITY**

- 7.1 In all matters arising in relation to individuals appointed to a Joint Role the Parties' human resource teams shall work co-operatively to determine:
- 7.1.1 Which Party shall carry out any investigation required for any grievance, disciplinary or other matter regarding an individual appointed to a Joint Role;
- 7.1.2 Where an individual was appointed to a Joint Role but the circumstances do not fit within clause 7.2, which policies or procedures shall apply to any grievance, disciplinary or other matter regarding an individual appointed to a Joint Role.
- 7.2 Each party acknowledges that where individuals appointed to a Joint Role are legally employed by one Party, it shall be that Party's policies and procedures that shall apply concerning the management of the individual in the Role in any disciplinary, grievance or other employee related matters. The decision-making responsibility will rest with the employer specifically including the decision to terminate an employee.
- 7.3 Where any claim or complaint is made by an individual or about an individual engaged in a Role, in the event that such claim or complaint leads to a claim being made, or threatened to be made, to an employment Tribunal whether by that individual or a third party the Party in receipt of the claim or complaint shall share all relevant information concerning the claim or complaint with the other Party and the Parties shall continue to share all further information concerning the claim or complaint until this is concluded.
- 7.4 Each Party shall be entitled to have conduct of any legal claim made against itself by a person appointed to a Joint Role. Notwithstanding this, the Parties shall seek where practicable to co-operate in defending or settling such claims as may be appropriate.
- 7.5 Where the Trusts have divergent views on whether to settle any proceedings, they shall, as soon as practicable discuss and agree whether any changes to the division of liability is required (with no change being presumed).

## **8 DISPUTE RESOLUTION**

- 8.1 In the event of any dispute arising under or in connection with this Memorandum of Understanding, any aggrieved party shall first give notice of the dispute to the and the Parties shall seek to settle the dispute amicably as soon as possible and in any event within seven (7)

Business Days of notice of the dispute being served, at a meeting convened for the purpose of attempting to resolve the dispute.

- 8.2 If the dispute remains after the meeting detailed above has taken place, the Parties will make a good faith attempt to resolve their dispute through direct negotiation by escalating any dispute up to a member of senior level management of each party with authority to settle the dispute and such members of senior management will meet as soon as possible after the meeting referred to in Clause 8.1 and in any event within twenty-eight (28) Business Days of that meeting.

## 9 TERMINATION

- 9.1 This Memorandum of Understanding may be terminated in its entirety by a joint decision of the Parties.
- 9.2 Either Party may give 12 months' notice to terminate this Memorandum of Understanding.

## 10 CONFIDENTIALITY

- 10.1 Each Party will comply with and acknowledge the four basic principles of "Protect, Inform, Provide Choice and Improve" as set out and described in the Department of Health NHS Confidentiality Code of Practice.
- 10.2 In respect of any Confidential Information it may receive from the other Party ("**the Discloser**") and subject always to the remainder of this Clause 10, each Party ("**the Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 10.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Memorandum of Understanding;
- 10.2.2 the provisions of this Clause 10 shall not apply to any Confidential Information which:-
- (a) is in or enters the public domain other than by breach of this Memorandum of Understanding or other act or omissions of the Recipient; or
  - (b) is obtained by a third party who is lawfully authorised to disclose such information; or
  - (c) is authorised for release by the prior written consent of the Discloser; or
  - (d) the disclosure of which is required to ensure either party's compliance with FOIA.
- 10.3 Nothing in this Clause 10 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or where requested or required to do so by any Regulatory or Supervisory Body as defined under the NHS Standard Contract.
- 10.4 In consideration of the disclosure of confidential information any each of the Parties must inform the other Party immediately upon becoming aware of suspecting that an unauthorised person possesses, is using or knows of any of the Parties' confidential information. In the event of termination or expiry of this Memorandum of Understanding, each Party shall promptly return to the other all of the information which is in its possession or control and all copies thereof and shall destroy all copies of the same and certify to the party that it has done so, unless the Party

is prevented by law or any regulatory authority from destroying or returning all or part of such data, in which case the party shall keep such data confidential and shall not process it further.

## 11 DATA PROTECTION

- 11.1 The Parties acknowledge their respective duties under Data Protection Legislation. For the avoidance of doubt, each party shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 11.2 The Parties shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include only transferring Personal Data (a) if required, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any standards applicable to the NHS under the Law and guidance.
- 11.3 The Parties agree to use all reasonable efforts to assist each other to comply with the Data Protection Legislation. This includes (but is not limited to) the parties promptly notifying each other if they receive a request from a data subject to have access to personal data or any other complaint or request relating to each other's obligations under the Data Protection Legislation and provide full co-operation and assistance to each other in relation to any such complaint or request in order to comply with the relevant timescales set out in the Data Protection Legislation where applicable (including without limitation, by allowing data subjects to have access to their personal data).
- 11.4 The Parties agree not to transfer Personal Data out of the European Economic Area unless such a transfer has been approved by the Parties and complies relevant safeguards.

## 12 FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL PROTECTION REGULATIONS

- 12.1 Each Party acknowledges that the others are subject to the requirements of FOIA and the Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time. Each party shall act in accordance with the FOIA, and these Codes of Practice to the extent that they apply to this Memorandum of Understanding.
- 12.2 Where a Party receives a request for information (a "**Request for Information**") in relation to information which it is holding on behalf of the other Party, it shall procure (and shall procure that its subcontractors shall):
- 12.2.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within three (3) Business Days of receiving a Request for Information;
  - 12.2.2 provide the other Party with a copy of all information of the other Party in its possession or power in the form that the other party requires within five (5) Business Days (or such other period as the other party may specify); and
  - 12.2.3 provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- 12.3 Each Party shall be responsible for determining whether the Confidential Information and or any other information is exempt from disclosure or is to be disclosed in response to a Request for Information. However, the parties acknowledge and agree that they shall consult each other and take into account the other Party's views in relation to any Request for Information relating to the other Party's Confidential Information prior to any disclosure. The Parties acknowledge



and agree that a Party may be obliged to disclose Information following consultation with the other Party and having taken its/their views into account.

### 13 INTELLECTUAL PROPERTY

- 13.1 Nothing in this Memorandum of Understanding or any activity undertaken that is contemplated by this Memorandum of Understanding shall affect the ownership by any party of any Intellectual Property Rights it held immediately prior to this Memorandum of Understanding coming into effect ("**Pre-existing IPR**").
- 13.2 Each Party (the "**Granting Partner**") shall grant to the other Party a royalty free, non-exclusive licence to use its Pre-Existing IPR for as long as the Granting Partner remains a Party to this Memorandum of Understanding solely to the extent that this is necessary for the carrying out of the obligations in this Memorandum of Understanding.
- 13.3 Any Intellectual Property Rights created by the individuals in Roles or by the Parties in the course of the activities contemplated by this Memorandum of Understanding during the term of this Memorandum of Understanding ("**Shared Intellectual Property Rights**") shall be jointly owned by the Parties (as at the date of creation of the relevant Intellectual Property Rights).
- 13.4 Each Party:
- 13.4.1 shall not enter into any licence or other contract exploiting or disposing of the Shared IPR without the agreement of the other Party;
  - 13.4.2 shall share any receipts produced by such exploitation with the other Party from time to time in the same proportions as their liabilities under clause 6.1.3 in respect of the person who created the Shared Intellectual Property Rights or if this cannot be readily determined 50/50.
  - 13.4.3 shall grant to the Parties at the time of creation of the relevant Shared IPR a perpetual, non-terminable, royalty free, license to use the Shared IPR for the purposes of carrying out their statutory functions.

### 14 WARRANTY

- 14.1 Each Party warrants to the others that it has all necessary power and authorisation to enter into and be bound by the terms of this Memorandum of Understanding.

### 15 RELATIONSHIP OF THE PARTIES

- 15.1 The group arrangement itself does not have a legal personality and is not a partnership or joint venture. There shall be no agency as between the Parties and accordingly no Party shall be authorised to bind any other party.

### 16 CONFLICT OF INTERESTS

- 16.1 The Parties undertake to take all necessary measures in order to avoid any conflicts of interest during the performance of the Memorandum of Understanding, as well as to identify any conflicts of interest. If any of the parties has a conflict of interest then the party shall immediately consult with the regarding further actions.
- 16.2 Any conflicts of interest will be documented and registered by each Party.

### 17 GENERAL

- 17.1 Save as required by law, no publicity shall be made by any of the Parties relating to any matter in connection with this Memorandum of Understanding without the prior written consent of the other parties.
- 17.2 Each Party shall from time to time upon the request of the other(s), execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of this Memorandum of Understanding.
- 17.3 Any provision of this Memorandum of Understanding which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 17.4 The failure by a Party to insist upon the strict performance of any provision, term or condition of this Memorandum of Understanding or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 17.5 No variation or agreed termination of this Memorandum of Understanding or of any document referred to in it shall be effective unless it is in writing and executed by both Parties.

## **18 NOTICES**

- 18.1 Any notice given under this Memorandum of Understanding shall be in writing and may be given either personally or by first class post or email addressed to the other parties at their addresses set out at the Schedule to this Memorandum of Understanding.
- 18.2 A notice given by first class post shall be deemed to be served two Business Days after posting and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service. Any email shall be deemed served on the day of sending if sent on a Business Day between 9.30 and 17.00, otherwise it shall be deemed served on the next Business Day.

## **19 THIRD PARTY RIGHTS**

- 19.1 A person who is not a party to this Memorandum of Understanding shall have no rights pursuant to this Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Memorandum of Understanding.

## **20 COUNTERPARTS**

- 20.1 This Memorandum of Understanding may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

## **21 LAW**

- 21.1 This Memorandum of Understanding is to be governed and construed according to English law ("Law") and the English Courts shall, subject to the provisions at Clause 8 (Dispute Resolution) have exclusive jurisdiction.

### SCHEDULE 1 – NOTICE PROVISIONS

Notice may be sent to the Parties at the following addresses:

Party	Address	Email
NORTHAMPTONSHIRE HEALTHCARE NHS FOUNDATION TRUST	Chief Executive St Mary's Hospital London Road, Kettering, NN15 7PW	<a href="mailto:foundationtrust@nhft.nhs.uk">foundationtrust@nhft.nhs.uk</a>
LEICESTERSHIRE PARTNERSHIP NHS TRUST	Chief Executive  Bridge Park Plaza, Bridge Park Road, Thurmaston, Leicester, LE4 8PQ	LPTLegal@leicspart.nhs.uk

**SIGNATURE PAGE**

**SIGNED by [NAME]**

for and on behalf of **NORTHAMPTONSHIRE  
HEALTHCARE NHS FOUNDATION TRUST**

.....  
(Signature)

**SIGNED by [NAME]**

for and on behalf of **LEICESTERSHIRE  
PARTNERSHIP NHS TRUST**

.....  
(Signature)