



**System working -
staff mobility / portability
guidance for employers**

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Introduction

Integrated care is one of the key elements of the government's approach to improving the health and care service for patients. The provision of new models of care between partners in community, acute and primary care relies on collaborative working between these organisations, and the mobility/portability of NHS staff between organisations will be a critical element of success.

This guidance on staff mobility/portability was commissioned by NHS England and developed by NHS Employers in collaboration with Capsticks Solicitors LLP. It has also been informed through engagement with employers and staff side colleagues from the Social Partnership Forum (SPF).

In this guidance, we look at the employment law issues that arise when moving staff within the NHS, and the practical issues to be considered when entering into a workforce sharing agreement model. This is to be distinguished from a scenario where there is a change of employer and the Transfer of Undertakings (Protection of Employment) (TUPE) regulations apply because of the transfer of an undertaking or a service provision change. It will be essential for organisations that are approaching workforce sharing to give due consideration to whether or not TUPE applies.

We set out guidance for organisations that have established that TUPE does not apply, but that in relation to new care models they will provide a particular service via a shared workforce. Throughout this guidance we refer to the substantive NHS employer as the 'employing organisation'. The host organisation, at which the employee will provide services on either a long-term or short-term basis, is referred to as the 'host'.

Partnership working

The national SPF recommends employers engage with their staff and work in partnership with trade union representatives at an early stage in the development of new models of service provision.

A social partnership approach allows staff and their trade union representatives to actively engage in planning and implementation to help ensure any new models for providing health services are satisfactory to the staff involved and support better service provision.

Guidance for social partnership working in developing new care models and system transformation is available on the [SPF website](#).

Portability in practice

A number of NHS bodies have opted to work collaboratively and have adopted different approaches to establish portable workforces.

1. Groups of organisations have created partnerships to deliver a comprehensive service to patients, with an overarching memorandum of understanding to set out guiding principles. Separate workforce sharing/service level agreements are then created for each specific workforce sharing agreement service.
2. Partnerships are formed by two or more organisations in respect of particular services, such as pathology, where the terms of portability are set out in a workforce sharing agreement/service level agreement between the organisations involved. These agreements set out the responsibilities of the organisations and we look below at some of the legal aspects that organisations should consider when drafting an agreement. In this scenario, employees remain employed by the employing organisation and are then moved to the host through the use of a licence to attend.

3. A number of organisations have set up collaborative banks to address their temporary staffing needs. Many organisations run their own staff banks but, through a collaborative bank, these resources are pooled with one organisation leading as the administrative hub. The organisations involved would agree a set rate for work carried out and agree that each organisation will look to the collaborative bank first to fulfil their staffing needs, before the use of agencies.

Advice may need to be sought on what model will best serve the needs of the organisations involved, and the documents that are required will vary according to the model selected by the organisations.

[See examples on page 7.](#)

Employment models

There are a number of ways in which NHS organisations can approach staff portability.

Mobility of existing staff

Each contract of employment/statement of terms will set out an employee's place of work. This will usually refer to the employer's main location or set out that an employee may be asked to work at a number of locations.

With a workforce sharing model, the current contracts of employment at all the organisations involved should be assessed to establish whether they contain sufficient flexibility to accommodate the movement of staff. It may be that the contract gives an employer the freedom to request that an employee provides services at a location other than the principal place of work. Alternatively, place of work clauses may contain a limitation in terms of the distance an employee may be requested to travel in their role, which will limit the mobility of staff and may require a variation to the contract of employment.

Where employees may be required to provide services in new locations through workforce sharing, we advise looking at these circumstances on a case-by-case basis. Any protected characteristic (eg disability) under the Equality Act 2010 should be taken into consideration when assessing the requirement to travel. Employers should also consider an individual employee's ability/willingness to travel in the context of workforce sharing, and what adjustments could be made to facilitate this. For example, adjusting working hours, start and finish times or other flexible working arrangements.

Organisations should address the issue of travel expenses under nationally agreed terms and conditions, where applicable, and/or any local policies regarding reimbursement of travel costs, within the workforce sharing/service level agreement. As part of the workforce sharing negotiations, the parties should establish which organisations' policies will apply. It would usually be advisable for the policies of each employee's employing organisation to continue to apply to that employee for the duration of workforce sharing. This may have practical implications where, for example, car parking charges are greater at a host and this may be addressed in a workforce sharing agreement/service level agreement.

Consideration should also be given to any tax implications that may arise from the reimbursement of expenses.

[See Appendix 1 - Model workforce sharing agreement](#)

Secondment

Secondments are frequently used in the NHS and most employers are familiar with tripartite secondment agreements.

Secondments are agreed by mutual consent of the parties involved. The employing organisation will remain the employer of a seconded employee who then provides his/her services to the host. The secondment agreement should contain a clause clarifying that the employing organisation will remain the employer of the seconded employee. As such, the employing organisation will remain primarily liable for the discharge of all employment obligations towards the employee, including pay and other terms and conditions. If an organisational restructure takes place within the employing organisation that affects the seconded employee, it would be vital for the employee to be informed and consulted with as if they had been working at the employing organisation. The employing organisation will continue to be responsible for any legal claims that result from the actions of the employee in the course of his/her employment. This would include any liability arising from negligence of the employee, or any form of harassment or discrimination. Likewise, the employing organisation will continue to be primarily responsible for its statutory and common law obligations in respect of the health and safety of the seconded staff. Although, the host will also have some legal duties towards the staff, for example, in respect of health and safety of the secondee, and the colleagues / patients of the secondee while carrying out the services at the host. The liabilities of the parties should be discussed as part of the negotiations about workforce sharing and they should be recorded in the secondment agreement, together with any indemnities relating to the liabilities.

The employee will work under the direction of the host while on secondment. The host usually compensates the employing organisation for the services of the seconded individual and is invoiced on a monthly basis for their services. During the secondment, the employing organisation will be responsible for all management issues, including any necessary disciplinary action.

Secondments will be for a set time, usually to complete a specific task. Once the secondment is complete, the individual will return to work for their employing organisation. However, there is nothing to prevent a secondment from being ongoing, with notice provisions in the secondment agreement in case any of the parties wish to end the arrangement. However, there could be some risks in this scenario around the interrelationship with TUPE. (See the TUPE section on page 6).

The most significant advantage of the secondment agreement is the flexibility it provides. While secondments tend to be thought of as a full-time move to an organisation for a specific project, a secondment could equally be used for a partial arrangement. However, entering into a secondment arrangement with each member of staff could be time-consuming. Some organisations may prefer to put in place an overarching workforce sharing agreement/ service level agreement with a licence to attend, which is a less complex document.

[See Appendix 2 – Secondment agreements: key considerations](#)

There are normally VAT charges for the supply of staff from one organisation to another, but HMRC makes an exception for staff who are seconded within the NHS. We recommend seeking advice from specialist tax advisors on this point if it could become an issue.

Licence to attend and honorary contracts

A licence to attend is used when an individual is employed by an organisation and is then given access to attend a host for a limited purpose only. A licence is not usually intended to create any relationship of employment or result in any payment obligations between the individual and the host, although it is usual to ask the individual to respect the host's specific policies and procedures. The individual in question is given very limited rights of access, usually relating solely to what is needed for them to carry out their role.

A licence to attend is not usually intended to result in any payment obligations between the employee and the host. But, an overarching agreement between the organisations involved, such as a workforce sharing agreement, may deal with this issue. A licence to attend is a simple document so would not usually require any significant negotiation. If it is being used for clinical staff it is important it addresses the issue of indemnity.

Traditionally, honorary contracts are used to allow clinical consultants from one NHS organisation to access another organisation's facilities in order to see patients for the purposes of continuing professional development, or to allow research to be conducted on organisations' premises by third parties.

In the context of portability, we would recommend a licence to attend is more suitable.

[Appendix 3 – A template licence to attend.](#)

Joint employment

It is possible to issue one employee with a joint employment contract by two employing organisations, but the SPF's view is that joint employment is not its preferred option. Joint employment can prove problematic and we would recommend that organisations consider the other methods of portability in preference to this method.

The employing organisations in a joint employment context would need to give careful consideration to the terms of employment and how their respective rights and obligations will sit. For example, it would be important to establish and document which employer has responsibility for complying with PAYE obligations and accounting for National Insurance contributions. This model can be useful where two organisations are genuinely working in partnership to deliver a single service and joint employment is the simplest way to deliver the service.

Consideration will also need to be given to potential VAT issues that may arise. Generally, when a business makes a supply of staff, it must charge and account for VAT at the standard rate (subject to an exception for secondments between NHS employers). HMRC will not normally consider there to be a supply of staff for VAT purposes when an employee is jointly employed, and this model can therefore have advantages when working with the third or private sectors. Staff are regarded as jointly employed if their contracts of employment or letters of appointment make it clear that they have more than one employer.

An employee is not jointly employed if the contract is with a single entity but requires that the individual carries out work for other entities. In those circumstances, it is likely that the employing company is carrying out a supply of staff and VAT issues will need to be addressed. Where staff are jointly employed by two or more organisations, it may be that one of the entities deals with all of the administrative and cost consequences of the arrangement, such as making salary payments. This can often result in that entity carrying out paymaster services for the other, which may result in VAT being due. For these reasons, joint employment is not a common way to approach staff portability.

Examples of mobility/portability work taking place across England

1. Clinicians providing services – across a health and care system

South Yorkshire and Bassetlaw Integrated Care System (ICS), in consultation with HR directors and medical directors, developed governance arrangements for multi-lateral, inter-trust clinical service models. The ICS has found that the involvement of medical directors is critical as they need to confirm whether clinicians are able to work within their trust. The governance arrangements document contains the following core principles:

- An inter-trust agreement to waiver checks /compliance where the medical director or other lead signatory signs off as fit to practise (plus self-certification from relevant clinician).
- There needs to be an agreed host organisation for co-ordination of rotas and overall effectiveness.
- There needs to be a named point of contact within trusts to support incoming clinicians with practical issues.
- There needs to be a clear process for dealing with HR issues and clinical incidents.

2. Clinicians providing services – across two NHS trusts

University College London Hospitals NHS Foundation Trust (UCLH) and Whittington Health NHS Trust created a portability agreement to enable staff to be deployed between organisations in support of shared clinical priorities. The work led to the trust winning the Capsticks 2018 Award for Innovation in HR, part of the HPMA Excellence in HRM Awards. See the HPMA Awards 2018 [Winners' Guide](#) for more information.

Legal considerations

Data protection – transfer of data

To comply with General Data Protection Regulation (GDPR), which came into force on 25 May 2018, it will be necessary to establish the ways in which personal data is processed through the portability of staff and also identify the legal basis for processing this data.

There are six legal bases under Article 6(1) of GDPR.

- (a) **Consent:** the individual has given clear consent for you to process their personal data for a specific purpose.
- (b) **Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- (c) **Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).
- (d) **Vital interests:** the processing is necessary to protect someone's life.
- (e) **Public task:** the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) **Legitimate interests:** the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests.

a. Consent

Consent has historically been relied upon by employers as the legal basis for processing personal data. However, there has been some debate about how appropriate it is to rely on consent in an employment context, due to the unequal bargaining position that exists between most employees/workers and their employers. Guidance from the Information Commissioner's Office (ICO) suggests that an alternative legal basis should be relied on where possible.

b. Contract

Much of the data processed about employees during a portability project will be used to comply with the terms of their contract of employment and any additional secondment agreement or licence to attend. For example, the payment of salary to a worker, and therefore the processing of their bank account details, is necessary to comply with the terms of engagement.

c. Legal obligation

Where organisations are required by law to collect and process certain information, such as an individual's right to work in the UK or to deduct income tax and National Insurance contributions, this will fall under the heading of 'legal obligation'. In addition, a worker's rights, such as those under the Working Time Regulations 1998, require that employers collect information about working hours, rest breaks and annual leave to ensure that they are complying with their legal obligations.

e&f. Public task and legitimate interests

Legitimate interests can be an organisation's own interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits. The GDPR specifically identifies processing employee/worker data as an example of employer's legitimate interests. A public authority can only rely on legitimate interests if it is processing data for a legitimate reason other than performing its tasks as a public authority. Unhelpfully, the phrase 'performance of its tasks' is not defined and there has, as yet, been no further guidance issued on this. However, it is likely that most tasks undertaken by NHS organisations will fall under one of the headings above, including movement of staff between organisations, where needed.

Data sharing agreements and privacy notices

Under the GDPR, organisations need to explain the lawful basis for processing the personal data of individuals, how long the data will be held, and staff's right to complain to the ICO if they think there is a problem with the way their data is being handled. We recommend that this is set out in a specific document, called a privacy notice (or fair processing notice), particularly where that data may be shared with third parties under a workforce sharing agreement.

Depending on the chosen workforce sharing model, each party may become a data controller for the purposes of the GDPR. Where this is the case, we recommend that a data sharing agreement is created setting out each party's data protection obligations, so that everyone is clear on these and appropriate indemnities are in place.

Working Time Regulations

Under the Working Time Regulations 1998, the 48-hour working week includes the hours worked at the employing organisation and hours worked for other organisations. Employers must take all reasonable steps to ensure that the limit is complied with and we suggest that the employer keeps an accurate record of the total of hours worked elsewhere. It is recommended that an obligation is placed on both the worker and the host organisation to provide this information. Employees should be reminded that they are responsible for ensuring they do not work over the 48-hour limit and that steps may be taken to protect their health and safety if the limit is exceeded.

TUPE

Where employment is to remain with the employing organisation, any workforce sharing agreement/service level agreement should make clear that TUPE will not apply to any of the arrangements provided within it. The agreement should reiterate that staff shall remain employed by their employing organisation as at the date of the agreement.

However, regardless of the term of the agreement, TUPE may apply if a service has transferred from one legal entity to another. This can be a particular issue for long-term secondments where the long-term nature of the arrangement could lead a tribunal to conclude that a change of service provider has taken place. In such a case, regardless of the intentions of those involved, TUPE would apply as a matter of law and a change of employer would occur, rendering the secondment agreements meaningless.

Where a service does transfer to a new legal entity, such as when a group of organisations agree to use one of the organisations as the lead employer, it is likely that TUPE will be deemed to apply.

If a workforce sharing model comes to an end, TUPE may apply on termination of the arrangement but this will not always be the case. The application of TUPE will depend on a range of factors, including the way in which the services will be delivered in the future. It is advisable to ensure that any workforce sharing agreement/service level agreement includes a process that will apply if the arrangement is terminated and, if appropriate, indemnity provisions.

If TUPE was deemed to apply then the [SPF staff transfer guide](#) is a useful resource.

Right to work checks

UK Visas and Immigration (UKVI) requires employers to check and keep copies of prospective employees' documents to ensure that they have the right to work in the UK. Failure to comply with that legal obligation is a criminal offence. The checks must be undertaken by, or on behalf of, the employer before employment begins. Further information on right to work checks is available on [NHS Employers' employment checks web pages](#).

Where employment remains with the employing organisation, the workforce sharing agreement/ service level agreement should contain a warranty that each member of staff who is moving has the right to work in the UK and that the employing organisation has the appropriate evidence of this. As employment remains with the employer, and the host is not the employer, there is no need for the host to see the right to work documents but they may want some assurance, such as written confirmation or copies of the right to work checks. Organisations should also check that a move to another organisation does not invalidate any right to work already granted, such as sponsorship certificates that aren't transferable. Host organisations are also advised to request photographic evidence to verify the identity of the member of staff attending their organisation.

Document checks will need to take place whenever an individual starts work with a new organisation. This includes where a collaborative bank is formed, and for each assignment where an individual becomes an employee of the engaging organisation. Document copies must be retained on file to be relied upon if the individual returns to work at that organisation.

The key to right to work checks is the identity of the employing organisation where the services are provided and whether that person has evidence of the right to work in the UK.

Disclosure and Barring Service (DBS) checks

According to Care Quality Commission (CQC) guidance, if an individual takes up a new position and they are currently working in services regulated by CQC, that person can satisfy the expectation that they have an appropriate DBS check by providing evidence of a check that is relevant to the role and is less than three months old at the point of application. The same rules will apply as for the right to work checks. Where the employer remains the same, the workforce sharing agreement should contain a warranty that a DBS check has been obtained by the employing organisation.

The NHS Employment Check Standards outline DBS requirements for eligible positions in the NHS. More information is available on [NHS Employers' website](#).

Use of the DBS Update Service allows an applicant to apply for a DBS check only once in most circumstances, unless there is a significant change in duties. If they subsequently need a further check of the same type, the existing certificate can be used and an employer can review whether any changes have occurred. This would appear to be the most efficient way of carrying out DBS checks for staff who are, for example, part of a collaborative bank and will be moving to different employers with each assignment

Indemnity

Within any workforce sharing agreement/ service level agreement, we recommend that indemnities are included so that all organisations involved are aware of the circumstances in which they will be liable for the actions of the employees. For example, it's important to be clear on whose indemnity insurance would apply if a patient is harmed by an individual on secondment, or an individual on secondment suffers an injury at work.

Usually, overarching agreements contain extensive clauses dealing with such indemnities, which should provide certainty and reassurance to all involved.

In the context of clinical staff, documentation often refers to the NHS clinical indemnity scheme (CNST), but it is essential that organisations verify with NHS Resolution whether the indemnity will apply in each case of workforce sharing, as it is dependent on organisations being members of the scheme.

Practical issues

When agreeing the terms of a portability project, we suggest that the following practical points are addressed and provision is made for them in the workforce sharing agreement/service level agreement.

Uniforms

The cost to hosts of providing uniforms for transferring staff will clearly be significant and so where possible, we recommend that employees who normally wear a uniform at their employing organisation should wear that uniform when undertaking any work at a host. This would be appropriate when staff are moving to hosts on a short-term or intermittent basis.

Where employees will be working regularly at a host, it may be decided that they should be supplied with the uniform of the host. The workforce sharing agreement/service level agreement should make clear that on termination of the portability of that member of staff, the uniform of the host must be returned.

Security passes and IT access

We recommend that for short-term assignments, employees working at the host are asked to display the ID badge for their employing organisation at all times while working at the host site.

For longer-term assignments, employees may be issued with an ID badge for the host if this is preferred. The process for requesting an ID badge for the host will usually be the same as requesting one for a bank employee on long-term assignment. This principle also applies for requesting IT access to emails with the host.

Consideration will also need to be given to how staff operating in a host organisation will access clinical system and data.

It is recommended that the workforce sharing agreement/service level agreement contains clauses about confidentiality and intellectual property, and that these are brought to the attention of all staff who are subject to the agreement.

Travel to different sites and car park charges

The responsibility for travel costs (including car parking) of an employee required to attend a host should be established as part of the workforce sharing agreement/service level agreement negotiations, bearing in mind the provisions of nationally agreed terms and conditions or local agreements where applicable. It will be essential to agree which policies apply to each employee who is moving as part of workforce sharing.

Where the use of car park facilities at a host is more expensive than the employing organisation, or where the host charges staff for use of the car park and the employing organisation does not, this is an additional expense which should be considered and any policy on reimbursement should be dealt with in the workforce sharing agreement/service level agreement.

It is up to the parties to agree in advance which should bear the costs of additional travel expenses and account for this in the agreement through reimbursement if necessary.

Training

Complying with mandatory training requirements should be considered within a workforce sharing/service level agreement for staff who are moved between organisations. This would include continuing professional development (CPD) and revalidation where appropriate. Much will depend on the work pattern and how frequently a member of staff is required to work away from their employing organisation, but responsibility for compliance will usually rest with the employing organisation. Provisions should be included in the documentation to ensure these requirements can be met.

Streamlining staff movement

The streamlining staff movement programme identifies the benefits of organisations adopting the core skills framework around statutory and mandatory training. Although the focus of streamlining is around staff changing jobs and employers, it is recognised the principles around improving the experience of staff and reducing duplication can also support better system working. Further information on this work is available on the [NHS Employers website](#).

Appendix 1

[INSERT NAMES] **Workforce Sharing Agreement**

Governance Arrangements

This document sets out the governance for delivery of workforce sharing agreement models of care between trusts engaged in the [insert name] Partnership.

Workforce sharing agreement models of care governance arrangements

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1. Parties to this agreement

The following organisations are party to this agreement (the “Parties”):

- [List organisations]

The Parties together will be known as the [insert name] Partnership.

Each Party agrees to approach workforce sharing agreement models of work within the [insert name] Partnership as set out in this agreement.

2. Purpose

The purpose of this agreement is to set out governance arrangements for the management of workforce sharing agreement services across the [insert name] Partnership.

This document serves to clarify governance underpinning multi-lateral models of service, which are emerging as Trusts increase collaboration as a means of supporting sustainability and safety of local services whilst reducing duplication and improving efficiency.

Examples of workforce sharing agreement models of care are centralised care services across the [insert name] Partnership footprint which facilitate acute and primary care and community service provision and are staffed by clinicians and support services from multiple organisations, supported by service level agreements (SLAs).

These models will be premised on the delivery of services by clinical and support staff employed by one party (the “Employer Trust”) to provide their service across the setting within the designated area including community, acute and primary care at other host Trusts (“Host Trusts”). In some circumstances, there also may be a named Trust responsible for the administration arrangements (“Lead Trust”) such as administrator or host for recruitment.

The process which should be followed by the parties when entering a workforce sharing agreement model is set out at clause 4 of this agreement.

The following principles have been identified as being essential to enable workforce sharing agreement models to be successful:

1. Shared recruitment vision and collegiate approach to effective internal workforce distribution.
2. Effective, collegiate approach to competence and training equipping staff with the skills to enable them to move between trusts.
3. Sufficient support resources will enable clinical staff to focus on direct clinical care and not be faced with avoidable administration when requested to work across the [insert name] Partnership.
4. There should be appropriate risk-share in relation to liabilities and indemnities between trusts in the [insert name] Partnership.
5. Data, including the personal data of staff, should be readily available and accessible to facilitate a collaborative approach to effective workforce planning and resource allocation.

The arrangements set out in this agreement seek to build upon, rather than replace, relevant provider to provider / SLAs.

The Lead Unit model in place for employment and training of junior doctors and dentists has separate agreements and governance in place and is therefore exempt from these arrangements.

This document seeks to provide a clear framework for the delivery of the above.

3. Quality requirements:

3.1 Quality standards:

The following general points apply to the delivery of quality standards.

1. Any workforce sharing agreement model should be clearly set out in a standard operating procedure which will include specific quality standards, typically an SLA.
2. A workforce sharing agreement model may require a nominated lead trust, responsible for the effective co-ordination of the arrangement in line with agreed quality standards, and relevant clinical governance processes.

3. Clinicians must adhere to relevant national quality standards and guidelines
4. for best practice regardless of location. These standards relate to both clinical and administrative quality, including record management.

4 Workforce Sharing Agreement Models

Once a change of service provision has been agreed within the [insert name] Partnership a letter of authority will be authorised by the [insert name of relevant group] authorising the establishment of the workforce sharing agreement model. Confirmation will also take place between relevant workforce teams as to which method will be utilised regarding the portability of staff.

Where appropriate the named Service Co-ordinator at the Lead Trust will ensure co-ordination of this process.

4.1 Process and Service Level Agreement

An SLA and/or relevant operating procedure will be developed which sets out the new workforce sharing agreement model. Where appropriate, this will clarify the Lead Trust for the co-ordination of the workforce sharing agreement model. If there is a bilateral agreement between two Trusts, this is likely to be the Trust delivering the service. If there is a multi-lateral agreement (three or more organisations), this role will be assigned and confirmed where necessary.

The SLA should include minimum clinical competences required to deliver the service. The SLA should include warranties from the Employer Trust to the Host Trusts that staff who provide services under the workforce sharing agreement model will be compliant with DBS and occupational health checks, will have passed all relevant employment checks at the start of their employment including the right to work in the UK and that staff have a standard of English sufficient to perform the duties of their role.

Details of staff which are required to facilitate the SLA shall be agreed either in the SLA or separately. It may be preferable to formalise any long term deployment of a particular member of staff in separate documentation such as a secondment agreement.

The SLA should stipulate that it is not the intention of the parties that the Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to staff providing the services under the SLA and that it is the intention that all staff shall remain employed by their Employer Trust.

The SLA should set out that each Trust will, at their own expense, maintain appropriate insurance or membership of the NHSR Indemnity Scheme to cover the services provided by each Trust within the scope of the SLA. Such insurance shall include but not be limited to:

- Employers' liability;
- Clinical negligence liability;
- Professional negligence liability; and
- Public liability.

The SLA should include termination provisions which shall make clear that in the event of termination by one Trust the SLA shall continue in full force and effect for all other Trusts. The SLA should also include provisions which enable the removal of one Trust from the SLA where that Trust has materially and substantially breached the terms of the SLA, where the Trust is no longer licensed to provide the service within the scope of the SLA, or where removal is required by NHS Improvement, the Care Quality Commission or by law or regulation.

The SLA should include provisions regarding the return of property and information regarding the services on termination of the SLA.

The SLA should include provisions regarding the treatment of confidential information by staff involved in the provision of the workforce sharing agreement model and intellectual property created whilst carrying out the services.

The SLA should include provisions regarding the practicalities of the workforce sharing agreement model including the uniforms to be worn by staff providing services at the Host Trust, security passes and IT access, travel and car parking charges.

The General Data Protection Regulation (GDPR) requires that staff who are included in any workforce sharing agreement model which requires the transfer of their personal data from the Employer Trust to a Host Trust must be told the way in which their data will be processed and the legal basis for processing this data. This information should be included in a privacy notice and the SLA should contain a clause under which the Parties acknowledge that they are obliged to comply with the GDPR.

The SLA should include a dispute resolution procedure.

4.2 Trust Roles and Responsibilities:

Each service will require clearly defined roles and responsibilities. The following sets out key roles and responsibilities which may apply although each scenario of workforce sharing agreement delivery will vary.

Medical Directors	<ul style="list-style-type: none"> Responsible Officer for clinicians employed within their Trusts who are engaged on workforce sharing agreement models
Workforce/ HR Directors	<ul style="list-style-type: none"> Responsible for ensuring named clinicians comply with DBS/right to work and Occupational Health checks prior to commencement on new service Responsible for sharing of workforce data to facilitate effective workforce planning in accordance with the GDPR
Service Co-ordinator (Lead Trust)	<ul style="list-style-type: none"> Named Officer with responsibility for co-ordination of service model and delivery of Lead Trust responsibilities Responsible for co-ordination and administration of arrangements, liaising with service leads in other Trusts as appropriate Responsible for completion of SLA and other relevant documentation prior to commencement and at set review points Responsible for delivery of clinical governance process Responsible for ensuring appropriate employment documentation is in place Responsible for co-ordination across relevant Trusts to ensure effective delivery of arrangements Responsible for collation and provision of relevant information to Trusts in terms of the monitoring and audit of the arrangement Responsible for collation and escalation of notified issues in relation to quality and standards <p>It should be noted that Trusts may wish to share these responsibilities under a particular service level agreement rather than making one Trust responsible for all of the above.</p>

Service Lead (Host Trust)	<ul style="list-style-type: none"> • Named Officer responsible for delivery of receiving service responsibilities, liaising with other colleagues as appropriate • Responsible for ensuring efficient and safe local induction including health and safety • Responsible for resolving or escalation of notified issues in relation to quality and standards • Responsible for ensuring clinician access to relevant policies and protocols • Responsible for supporting in terms of ID badges, security and car parking permits • Responsible for support clinicians with relevant queries in relation to the service • Responsible for supporting Service Co-ordinator in the effective delivery of the service • Responsible for liaising with Service Lead in Employer Trust regarding the hours worked by Employer Trust employees to ensure compliance with the Working Time Regulations 1998
Service Lead (Employer Trust)	<ul style="list-style-type: none"> • Named Officer responsible for delivery of Employer Trust responsibilities, liaising with other colleagues as appropriate • Responsible for delivery of Employer Trust obligations in relation to service • Responsible for ensuring commitments are appropriately structured in Job Plans • Responsible for ensuring an appropriate balance of responsibilities between Host Trusts and Employer Trusts • Responsible for dealing with any escalations relating to issues impacting quality and standards • Responsible for providing relevant information in relation to service that supports validation and accreditation of clinicians engaged in arrangements • Responsible for providing relevant information in relation to service where necessary in relation to investigation and disciplinary procedures
Employee	<ul style="list-style-type: none"> • Responsible for own clinical practice • Responsible for effective delivery of service as set out in SLA • Responsible for ensuring compliance with Employer and Host Trust policies including working time policies.

5. Liabilities and Indemnities:

It will remain the responsibility of the Employer Trust for all costs and checks in relation to the employment of appropriately qualified staff.

This includes:

- Salary and benefits including supplements, allowances and pension contributions
- Maternity / Paternity / Adoption leave
- Sick pay
- Visa and work permit verification
- Occupational Health approvals and vaccinations
- DBS checks

Investigations in relation to patient care will be led by the Host Trust (where the service has been delivered), with support from Employer Trusts as required. Where a matter arises in relation to the employment of an individual, any disciplinary process will be the responsibility of the Employer Trust, with Host Trusts supporting any process as appropriate including securing the involvement and attendance of witnesses in investigations, meetings and hearings.

Any costs, claims, damages, losses and expenses in relation to clinical negligence will be managed under the National Health Service Litigation Authority (NHSLA) clinical negligence scheme of the Trust responsible for the activity.

Any costs, claims, damages, losses and expenses in relation to managing any grievance, disciplinary and employment tribunal claims will remain the responsibility of the Employer Trust.

The SLA should contain indemnities covering the costs incurred by either the Employer Trust or the Host Trusts.

6. Monitoring and Review:

Any arrangement will be subject to clearly defined protocols which include relevant monitoring and audit processes.

7. Dispute Resolution:

The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the arrangement promptly through negotiation.

Where possible, dispute resolution will be managed across the relevant service leads involved in the arrangement.

8. Signatories:

Trust:	
Name:	
Role:	
Signature:	
Date:	

Trust:	
Name:	
Role:	
Signature:	
Date:	

Appendix 2

SECONDMENT AGREEMENT – KEY CONSIDERATIONS

We set out below some of the key considerations for organisations to take into account when drafting secondment agreements.

1. Parties

Organisations should consider whether the secondment agreement is to be a two-party agreement between the Employing Organisation and the Host or whether the employee to be seconded (the “secondee”) will also be a party. A tripartite agreement which includes the secondee will be a more complex document, and requires all three parties to sign the agreement, but will ensure that the secondee is fully aware of the scope of the arrangement and is personally bound by its terms. If the secondee is not a party to the agreement, the Employing Organisation will need to “procure” the secondee’s performance of his/her obligations to the Host.

2. Duration

The secondment will usually be for a fixed term, or for the completion of a particular project. However, it is possible to be ongoing in nature and could be used where employees are to be seconded one day per week to work at another organisation.

The agreement should make clear what will happen to the secondee at the end of the secondment – do they return to the Employing Organisation?

3. Duties and obligations

The secondee’s duties should be clearly set out, either in the main body of the secondment agreement or as a schedule. The responsibilities of the Employing Organisation and the Host must also be clearly spelt out including who is responsible for:

- day-to-day management of the secondee
- payment of salary, expenses and benefits. This would generally remain the responsibility of the employing organisation, which would then invoice the host for the secondee’s services
- handling disciplinary and grievance issues
- annual leave (for example, who approves requests, or what should happen to any annual leave accrued but untaken at the end of the secondment).

The agreement should also set out how the contract of employment will be varied by the secondment agreement, what obligations the employee owes to his/her Employing Organisation during the secondment and which organisation’s policies and procedures will apply.

4. Termination

The parties should consider how they are able to terminate the arrangement and include provisions in the agreement. Consideration should also be given to what happens if the secondee's employment terminates. Ordinarily, the secondment should automatically terminate. Other issues to discuss are:

- what happens if the Host wishes to terminate early e.g. because of capability or conduct issues
- do any summary termination provisions in the secondment agreement dovetail with those in the contract of employment?

5. Data protection

Organisations should ensure that any information transferred between the parties in relation to the secondee complies with the General Data Protection Regulation 2018 and the Data Protection Act 2018, and that a privacy notice is provided, ideally as an appendix to the secondment agreement.

6. Intellectual property

Organisations should agree who will own any intellectual property created by the secondee during the course of the secondment.

7. Liability and indemnities

The agreement should cover the following points:

- Liability for any loss or damage caused by the secondee during the secondment
- Who will be responsible for any claims brought by the secondee arising out of the secondment or its termination?
- That both parties are responsible for maintaining adequate insurance
- Indemnities should be included so that the organisations are aware of the circumstances in which they will be liable for the actions of the employees. For example, if a patient is harmed by an individual on secondment, whose indemnity insurance would cover that?
- In the context of medical staff, the NHS clinical indemnity may be referred to in the secondment agreement although it is essential that organisations verify with NHS Resolution whether the indemnity will apply in each case of workforce sharing.

Appendix 3

TEMPLATE LICENCE TO ATTEND TO SUPPORT WORKFORCE SHARING AGREEMENT

This licence to attend (the “Licence”) is made between [insert name of host organisation] (“the Host”) and [insert name of individual] of [insert address] pursuant to the agreement between the Host [and [insert name of organisations who are party to workforce sharing]] and your employer [insert name of employing organisation] (the “Employing Organisation”) that in the interests of efficiency they will share their workforces as regards the provision of [insert name of services].

This Licence sets out the main terms and conditions on which you will undertake duties at the Host as part of the [insert description of workforce sharing model].

1. You shall attend at the Host premises for the purpose only of [include description of the role and duties to be undertaken] at such times and dates as have been specified and confirmed in writing to you by your Employing Organisation.
2. For the avoidance of doubt, there is no contract of employment between you and the Host nor any contract for services and your status is purely an attendee on the premises. You are not entitled to any remuneration or any other payment whatsoever (including but not limited to salary, pension contributions, paid holidays, bank holidays or sick pay) from the Host as a result of performing the services referred to in paragraph 1 above.
3. Your terms and conditions of employment including applicable policies and procedures are determined by the Employing Organisation as your employer.

However, you must comply with the relevant health and safety and information governance policies applicable to the particular Host premises where you are providing the services. You must take every reasonable care for the health and safety of yourself and of others. You must perform your duties diligently and to the best of your ability and must not intentionally or recklessly interfere with, or misuse, anything provided in the interests of health, safety or welfare.

4. Whilst carrying out the services at the Host’s premises, you will be accountable to the Employing Organisation but you will follow the reasonable day-to-day instructions of [head of relevant Host department] or those given on his/her behalf in relation to the terms of this Licence.
5. If you are unable to provide the services at the Host due to sickness or injury, you must inform [head of relevant Host department] of the reason for the absence as soon as possible but no later than [9am] on the first day of absence.

[The Host does not have any duties or responsibilities towards you as an attendee but during your attendance at the Host’s premises you will be covered under the NHS clinical indemnity arrangements in respect of those patients of the Host to whom you provide care and treatment when you are performing duties in accordance with this Licence.

[NB – For Clinicians. It is essential that NHS Resolution confirms that the NHS clinical indemnity scheme arrangements will apply before this term is included]

6. [The Host does not have any duties or responsibilities towards you as an attendee but during your attendance at the Host's premises you will be covered under the NHS clinical indemnity arrangements in respect of those patients of the Host to whom you provide care and treatment when you are performing duties in accordance with this Licence.
[NB – For Clinicians. It is essential that NHS Resolution confirms that the NHS clinical indemnity scheme arrangements will apply before this term is included]
7. You must decline any duties or responsibilities for which you do not have the necessary skills, experience, qualification or training by notifying your line manager at your Employing Organisation and your supervisor at your Host as soon as reasonably possible and at all times ensuring that the impact on patient care and safety is minimised.
8. [Whilst working at the Host's premises you are required to wear the security badge from your Employing Organisation at all times]. [NB – include provisions regarding uniform depending on the agreement which is reached between the organisations]
9. The Host accepts no responsibility for your personal property whilst on Host premises or for any vehicles parked on Host premises. It is recommended that you make adequate insurance provision to cover your personal property as you deem necessary.
10. The Host may provide you with information of a confidential nature which is or may be private, confidential or secret, being information or material which is the property of the Host or which the Host is obliged to hold confidential including, without limitation, all official secrets, information relating to the working of any project carried on or used by the Host, research projects, strategy documents, financial information, reports, ideas and know-how, employee confidential information and patient confidential information. Such information must be treated as confidential and must not be disclosed except in accordance with any statutory or other legal requirement. This obligation shall continue after the expiry or termination of this Licence.
11. Personal data must also be collected, handled and used in accordance with the Data Protection Act 2018 and the General Data Protection Regulation 2018. You should be aware that unauthorised disclosure of personal data by you may result in the Host terminating this Licence with immediate effect and may also lead to personal liability.

12. All copyrights, patents, trade marks, service marks, design rights (whether registered or unregistered) and all other similar proprietary rights (whether registrable or not) in any work or other matter which arises wholly or partly in connection with your work under this Licence shall at all times be the absolute joint property of the Host and the Employing Organisation unless otherwise agreed in writing with you or the Employing Organisation or any other person, and you shall give all such co-operation and do all such things as the Host and/or the Employing Organisation may reasonably require to register or to protect each and every such right. You waive all present and future moral rights in any copyright works in favour of the Host and the Employing Organisation and agree not to support or maintain nor permit any claim for infringement of moral rights in such copyright works.
13. This Licence will automatically terminate on the termination of your current contract of employment with the Employing Organisation or on any change to your contract of employment which removes your ability to perform any duties at the Host.
14. The Host may also terminate the Licence at by giving xxxxx days' written notice to you. If you are in breach of any of the terms or conditions of this Licence or if you commit any act which the Host reasonably considers to amount to serious misconduct or to be disruptive and/or prejudicial to the interests and/or business of the Host or if you are convicted of any criminal offence the host will follow the process set out in the workforce sharing agreement and notify your employer. (or specify the process)
15. On termination of this Licence you will immediately deliver to the Host all documents, papers, drawings and copies relating to the Host's activities as well as keys, equipment and other property of the Host which may be in your possession or control.

for and on behalf of
[insert Host Trust]

I accept the Licence on the terms and conditions set out above

Signed:

Date:

Drafting Notes

If the organisations would prefer the provision of services to be for a fixed period, this should be reflected in the terms of the licence.

We recommend that workforce sharing agreements/service level agreement include provisions regarding professional registration, right to work checks, DBS checks and medical health of the employee. We recommend that the Employing Organisation provides a warranty that the necessary checks have been carried out and that evidence can be provided to the Host. Where the workforce sharing agreement contains these provisions, there is no need to repeat them in the licence. However, where they are omitted from the workforce sharing agreement, terms regarding these points should be included in the licence.

We recommend that the workforce sharing agreement sets out clearly the processes, policies and responsibilities between the employer and the host in circumstances where individuals are considered to have breached the terms and conditions of their licence/ secondment or committed an act which the host reasonably considers amounts to serious misconduct or to be disruptive and /or prejudicial to the interests and/or business of the host or an individual is convicted of a criminal offence.



NHS Employers

Part of the NHS Confederation

NHS Employers is a not-for-profit organisation, which is part of the NHS Confederation group. Its mission is to support workforce leaders to put patients first.

Contact us

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