

**MEMORANDUM OF UNDERSTANDING –
RE COLLABORATING TO SHARE STAFF TO ADDRESS ANY SERVICE ISSUES CAUSED BY
COVID-19**

BETWEEN:

Each **Participating Body** identified in the Introduction to this MOU, collectively the **"Participating Bodies"**.

INTRODUCTION:

- A. This Memorandum of Understanding (which may be referred to as the **Staff Collaboration MOU** or the **MOU**) is applicable to any organisation involved in the provision of Healthcare Services and who is a signatory to this MOU (or has provided electronic written confirmation they agree to the terms of this MOU) or which has in place any arrangements which involve an NHS organisation and which reference this MOU as the framework under which staff will be shared (a **Participating Body**).
- B. **Healthcare Services** means the provision in England of NHS or private health or social care services (whether primary, secondary/acute care or otherwise), any diagnostic services associated with the provision of healthcare, any services designed to facilitate these services or provide supplies that may facilitate these services and any service that may provide workers or volunteers to help provide or support such services.
- C. This MOU sets out the intention of the Participating Bodies to work together to address anticipated staff shortage issues arising from dealing with or as a consequence of the COVID-19 pandemic including (but not limited to) field hospital provision.
- D. The Participating Bodies have committed to working together in a collaborative and mutually supportive way for the benefit of patients, staff and the wider public.
- E. This MOU relates to members of staff ("**Staff Members**") who are employed or engaged by one Participating Body (the "**Participating Employer** ") but are provided to work for another Participating Body (the "**Receiving Body**"), usually but not necessarily an NHS organisation, under its terms. Such Staff Members shall include those engaged by a Participating Body in whatever capacity including as a volunteer, worker, contractor or member of agency staff.
- F. The Participating Bodies wish to ensure the proper observance of clinical governance requirements, while avoiding unnecessary bureaucracy which may impede the movement of Staff Members specifically (for example in relation to pre-employment checks and training requirements).
- G. The terms below set out the basis on which such arrangements take place. This MOU does not impact upon or supersede any other specific arrangements that may already exist and be in place between any of the Participating Bodies or between the Participating Bodies as set out in paragraphs 12.2.1 and 12.2.2. Any such other arrangements already in place or put in place subsequently will take precedence as between the parties to those arrangements over this MOU.

- H. The provisions of this MOU are not intended to be legally enforceable but the Participating Bodies will agree to provide each other with reasonable cooperation and assistance when operating the provisions of this MOU.

THE PARTICIPATING BODIES AGREE AS FOLLOWS:

1. STATUS

This MOU in no way changes or modifies any existing contract of employment, honorary contract or other contract held by a Staff Member with their Participating Employer nor any rights that Staff Member may have under such arrangement.

2. COMMUNICATION BETWEEN NHS BODIES

The Participating Bodies shall cooperate with each other in addressing any requests under this MOU and in providing information to each other in order to ensure the effective operation of it.

3. STAFF MEMBERS

3.1 By agreement between the Participating Bodies (as set out more fully at paragraph 4 below), a Staff Member of one Participating Body may be transferred on a temporary basis to work for a Receiving Body whether at the Receiving Body's premises, the premises of another Participating Body or at such other emergency facility as may have been created to support the NHS' COVID-19 response.

3.2 The Participating Bodies agree that the Staff Member shall remain an employee, worker or contractor (as the case may be) of their Participating Employer at all times and that nothing in this MOU creates (or is intended to create) an additional employment or other relationship between the Staff Member and the Receiving Body. The Staff Member shall not be entitled to receive any salary, pension, bonus or other benefits or payments from the Receiving Body but will continue to receive such remuneration and benefits as may be due to them from the Participating Employer.

4. REQUEST PROCESS

Save in exceptional circumstances, the following process will be adopted by the Participating Bodies before a Staff Member commences work for a Receiving Body:

4.1 the Receiving Body or a delegate of the NHS Region's Senior Responsible Officer for responding to COVID-19 shall make a request of a Participating Employer for Staff Members from the Participating Employer (the "**Request**"). The Request shall identify:

- (a) the numbers of Staff Members requested;
- (b) the roles/ job types of Staff Members (including where appropriate profession, grade, speciality or experience of Staff Member where that would help to identify requested Staff Members);

- (c) when it is desirable for Staff Members to commence work at the Receiving Body; and
- (d) if known at the time of making the request, the length of time that Staff Members are expected to be needed at the Receiving Body.

4.2 Upon receipt of the Request, the Participating Employer will consider in good faith the Request and consider whether it can comply in whole or part with the Request. The Participating Employer will confirm whether it can comply in whole or part with the Request. This confirmation will be given within 24 hours of receipt of the request or, if the request is received on a Friday, on the following Monday. To the extent that the Request can be agreed (whether in whole or part), the Participating Bodies involved will liaise to agree any practical arrangements necessary to implement the Request and will comply with any notification arrangements that may be in place at regional or local level for transfers of staff under this MOU.

4.3 This Request process may be varied at any time by agreement between the Participating Employer and the Receiving Body provided that any notification arrangements that may be in place at regional or local level for transfers of staff under this MOU are complied with.

5. **ASSURANCE RELATING TO STAFF MEMBERS**

5.1 The Participating Bodies are satisfied and give assurance to each other that they have in place appropriate processes which have verified their own respective Staff Members falling under this MOU as having passed any necessary mandatory checks and training necessary for that Staff Member to practice safely in their role at their Participating Employer. This includes that the Staff Member has met the NHS Employment Check Standards issued under Health Circular HSC2002/008 (as revised from time to time), at the time of recruitment and on an ongoing basis, and that the Staff Member has completed mandatory and other training requirements deemed sufficient by their Participating Employer to work in their substantive role. For the avoidance of doubt, where those mandatory checks involve Disclosure and Barring Service (**DBS**) checks, the Participating Employer will as a minimum have carried out a “fast-track” check of the Adults’ and Children’s Barred Lists under the emergency fast-track COVID-19 arrangements put in place by the DBS, while awaiting the results of a full DBS check, and will notify the Receiving Body of any Staff Member to whom only emergency Barred List checks have been completed so that the Receiving Body may undertake a risk assessment and put in place appropriate monitoring and supervision arrangements in respect of such Staff Members. In such situation, the Participating Employer will confirm to the Receiving Body as soon as practicable after full DBS clearance of the relevant Staff Member has been received by the Participating Employer.

5.2 Upon reasonable request, Participating Employers agree to provide Receiving Bodies with evidence of the checks referred to in Paragraph 5.1.

- 5.3 The Participating Bodies provide further assurance to each other that they will not send any Staff Member to another that they may have reasonable grounds for believing may be carrying COVID-19.
- 5.4 The Participating Employer agrees to update the employment checks, as required by the NHS Employment Checks Standards, and continue to provide the Staff Member's professional and mandatory training for the duration of any period that a Staff Member may be working at another Receiving Body following a Request.
- 5.5 Should, following the provision of a Staff Member by the Participating Employer, any change(s) occur to any checks or any circumstance arises which leads the Participating Employer to reasonably conclude that any Staff Member provided to a Receiving Body is not safe to practice, the Participating Employer shall, without prejudice to Paragraph 8, notify the Receiving Body of this as soon as practicable.
- 5.6 Each Participating Body gives assurance that, should it become a Receiving Body, it shall comply with all health and safety obligations and exercise such duty of care over Staff Members received from a Participating Employer as if such Staff Members were the Receiving Body's own employees.
- 5.7 To the extent permitted under the Data Protection Act 2018, the Participating Employer shall consult with the Receiving Body if any of its Staff Members requires reasonable adjustments due to a disability or otherwise has restrictions on their ability to carry out their duties.

6. WORKING ARRANGEMENTS

- 6.1 Each Participating Body shall be responsible for the overall direction and supervision of their Staff Member and their Staff Member's conduct and actions during the period of time that the Staff Member may be provided to the Receiving Body (the "**Transfer Period**"). However, for the duration of the Transfer Period the Participating Bodies agree that the Staff Member will work under the day to day direction of the Receiving Body and will explain this to the Staff Member before s/he goes to the Receiving Body.
- 6.2 The Participating Employer and Receiving Body agree to co-operate fully and promptly with each other during the Transfer Period in respect of workforce matters ("**Matters**") concerning a Staff Member.
- 6.3 Save where agreed otherwise, the Participating Bodies agree that the Participating Employer remains responsible for the following Matters in relation to their Staff Members:
 - 6.3.1 disciplinary and capability issues (including, for the avoidance of doubt, the handling of matters under the Employing Trust's Maintaining High Professional Standards Policy);
 - 6.3.2 grievances;
 - 6.3.3 appraisals and performance-related procedures;

6.3.4 remuneration including pay progression; and

6.3.5 annual and other leave,

and it is agreed that there shall be no cross-charging or other reimbursement arrangements in relation to any such costs as between Participating Bodies.

6.4 Save where agreed otherwise, the Participating Bodies agree that in respect of the following Matters:

6.4.1 protected disclosures under the Employment Rights Act 1996; and

6.4.2 requests for personal data under the Data Protection Act 2018,

the Participating Body (which may be either the Participating Employer or the Receiving Body) responsible for the premises where or the systems on which (as applicable) the alleged issue or behaviour took place or the premises where the Staff Member was working at the relevant time is responsible for investigating, progressing and/or resolving these Matters. Where such Participating Body is the Receiving Body it shall notify the Participating Employer as soon as reasonably practicable of the circumstances giving rise to the Matter.

6.5 If the Receiving Body becomes aware of any matter that may give rise to a claim (or similar action or challenge) by or against the Staff Member, notice of that fact shall be given as soon as possible to the Participating Employer and the Participating Bodies shall cooperate in (as appropriate) investigating, responding to and defending such claim.

6.6 Each Participating Body shall keep a record of staff supplied and received under this MOU and the hours worked.

6.7 A Receiving Body may reject any Staff Members or return to a Participating Employer any Staff Members received from the Participating Employer at any time, without notice.

7. CONFIDENTIAL INFORMATION

7.1 The Participating Bodies agree to keep confidential all Confidential Information of any other Participating Body which comes into their possession or knowledge and that they shall not disclose any Confidential Information in whole or in part to anyone and shall not use such Confidential Information other than in connection with the provision of the services under this MOU.

7.2 The Participating Employer shall ensure that each Staff Member keeps confidential all Confidential Information of the Receiving Body which they have access to during the Transfer Period and that they shall not, during the Transfer Period or at any time thereafter, disclose any Confidential Information in whole or in part to anyone and shall not use such Confidential Information other than in connection with the provision of the services under this MOU.

- 7.3 For the purposes of this paragraph 7, “**Confidential Information**” shall mean any information of a confidential or secret nature relating to any and all aspects of the business of a Participating Body and/or any associated organisation and/or their patients, directors, officers, agents, employees, customers and suppliers including but not limited to treatments, treatment planning, personal and sensitive personal data, financial information, budgets, reports, business plans, strategies, know-how, formulae, designs, data, specifications, research, processes, procedures and programs, pricing, sales and marketing plans and details of past or proposed transactions whether or not written or computer generated or expressed in material form.
- 7.4 The obligations under this MOU shall not apply to information which may come into the public domain otherwise than through unauthorised disclosure by a Staff Member.
- 7.5 Nothing in this paragraph 7 shall prevent the Participating Bodies or a Staff Member from disclosing Confidential Information where it is required by law, for regulatory compliance purposes or for the purpose of making a protected disclosure under the whistleblowing (‘speaking up’) legislation.

8. **DATA PROTECTION**

- 8.1 The Participating Bodies agree to comply with their respective obligations under the Data Protection Legislation and to use all reasonable efforts to assist each other to comply with their obligations under the Data Protection Legislation. For the avoidance of doubt, this includes providing reasonable assistance to each other to comply with any subject access requests served under the Data Protection Legislation.
- 8.2 For the purposes of this paragraph 8, “**Data Protection Legislation**” means all applicable data protection and privacy legislation, regulations and guidance including the GDPR (or, once the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data), the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, and any guidance or codes of practice issued by any data protection regulator from time to time.

9. **LIABILITY AND INDEMNITIES**

- 9.1 Save where alternative arrangements regarding liabilities and indemnities are agreed in writing between the Participating Bodies the following shall apply.
- 9.1.1 Each Receiving Body shall be solely liable for any act or omission on the part of a Staff Member during their time working at that Participating Body during a Transfer Period.
- 9.1.2 Where the Receiving Body is an NHS organisation, it is agreed and understood that Staff Members will be carrying out NHS services on behalf of that NHS organisation and therefore the CNST and LTPS indemnity arrangements of the Receiving Body will apply (subject to the terms of

those schemes) in respect of the acts or omissions of a Staff Member received from an Participating Employer or alternatively that other specific indemnity arrangements to address COVID-19 work put in place by NHS Resolution (subject to the terms of such new scheme or arrangement) shall apply.

9.1.3 Where the Receiving Body is not an NHS organisation but Staff Members are employed or engaged by an NHS organisation, it is agreed that such Staff Member Members will be carrying out NHS services on behalf of their NHS organisation and therefore the CNST and LTPS indemnity arrangements of that NHS organisation will apply (subject to the terms of those schemes) in respect of the acts or omissions of such Staff Members during the Transfer Period or alternatively that other specific indemnity arrangements to address COVID-19 work put in place by NHS Resolution (subject to the terms of such new scheme or arrangement) shall apply to such Staff Members.

9.1.4 Where none of the indemnity arrangements referred to in this paragraph 9.1 above apply each Participating Body indemnifies the other against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, fines, expenses and demands suffered or incurred by the other arising out of or resulting from such act or omission.

9.2 The Participating Bodies hereby indemnify each other against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, fines, expenses and demands suffered or incurred by any other Participating Body arising out of or resulting from the acts or omissions of the indemnifying Participating Body in respect of its employment or engagement of a Staff Member including but not limited to:

9.2.1 its breach of this MOU;

9.2.2 in the case of a Participating Employer, the employment/engagement or termination of employment/engagement of the Staff Member; or

9.2.3 in the case of a Receiving Body, any actions it undertakes relating to a Staff Member during a Transfer Period, including in respect of health and safety

and including, where no other indemnity arrangements provided for by NHS Resolution may apply, liability for personal injury, accident or illness suffered, breach of contract or in tort, unfair dismissal, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

10. **ESCALATION**

1.1 If a Participating Body has any issues, concerns or complaints concerning the provisions of this MOU, it shall in the first instance seek to resolve that issue by a process of consultation with the other Participating Bodies affected. The Participating

Bodies shall in good faith use all reasonable efforts to resolve the issue(s) through internal consultation as soon as reasonably practicable.

- 1.2 If the dispute is not resolved, then the Participating Bodies may refer the matter to an independent party as they agree.

11. **RELATIONSHIP BETWEEN THE PARTICIPATING BODIES**

- 11.1 Nothing in this MOU is intended to, or shall be deemed to, establish any partnership or joint venture between the Participating Bodies or shall be deemed to constitute any Participating Body as the agent of the others or allow any Participating Body to hold itself out as acting on behalf of any of the others.

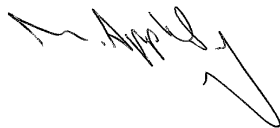
12. **ENTIRE AGREEMENT**

- 12.1 Subject to paragraph 12.2, this MOU constitutes the whole agreement between the Participating Bodies relating to the subject-matter of this MOU and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this MOU.
- 12.2 For the purposes of paragraph 12.1, the subject matter of this MOU shall not include:
- 12.2.1 staff-sharing arrangements agreed between any Participating Bodies that are unrelated to the COVID 19 pandemic response; nor
- 12.2.2 any pre-existing arrangements made between Participating Bodies in respect of any named individual (save where the relevant Participating Bodies agree otherwise in writing).

13. **GENERAL**

- 13.1 The provisions of this MOU may be varied only by agreement in writing and signed on behalf of all the Participating Bodies.

SIGNED for and on behalf of **Yeovil District Hospital NHS Foundation Trust**

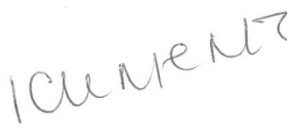


Signed

Name Mark Appleby
Position Director of HR & OD
Date 24 April 2020

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SIGNED for and on behalf of **Somerset NHS Foundation Trust**

Signed 

Name Isobel Clements

Position Director of People and Organisational Development

Date 23 April 2020

SIGNED for and on behalf of **Somerset Clinical Commissioning Group**

Signed 

Name James Rimmer

Position Chief Executive

Date 24 April 2020

SIGNED for and on behalf of **Somerset Primary Care Board and Somerset PCN CD Board**

Signed 

Name Dr Berge Balian

Position: Chair of both Boards

Date: 14/12/2020