

Lothian NHS Board

[Department and address]

Telephone

www.nhslothian.scot



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[Recipient's name & address]

Date 24 May 2024

Your Ref

Our Ref

Enquiries to

Extension

Direct Line

Email

LETTER OF AGREEMENT

[Insert Recipient Full Legal Name]

[Insert Registered Address]

[DATE]

Dear Sirs

Training and/or Competency Assessment Letter of Agreement

Lothian Health Board, a statutory body constituted pursuant to the National Health Service (Scotland) Act 1978 (as amended) and having its headquarters at Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG (who and whose successors and permitted assignees are hereinafter referred to as “**NHS Lothian**”), is writing to you, [Insert Recipient Full Legal Name], a company registered in Scotland under the Companies Acts (Registration Number [Insert company registration number]) and having its registered office at [Insert Registered Address] (hereinafter referred to as the “**Recipient**”), to confirm the terms of our agreement concerning the provision of training and/or competency assessment services by NHS Lothian to the Recipient.

1. Term

This Agreement is effective from the date of the Recipient’s acceptance of the terms set out herein, and shall continue in full force and effect until terminated in accordance with the terms of this Agreement (the “**Term**”).

2. The Services

2.1 The Recipient is involved in the provision of health and social care to individuals within Lothian.

2.2 In accordance with the ‘Framework to Enable Competency Assessment Across Health and Social Care in Lothian’ dated March 2023, the Recipient wishes to ensure that its staff, or any one or more of such staff, are appropriately trained in certain skills, and/or are able to demonstrate their competency in certain skills, in order to ensure that such



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- staff are able to provide safe and appropriate care and treatment to individuals to whom they provide a health and social care service.
- 2.3 The parties agree that as and when the Recipient identifies a need for training and/or a competency assessment in respect of any one or more of its staff, the Recipient should contact NHS Lothian to submit a request for NHS Lothian to provide such training and/or undertake such competency assessment.
- 2.4 Upon receipt of request from the Recipient, and where NHS Lothian is able, and has capacity (in terms of both time and resource), to provide the requested training and/or competency assessment, the parties shall work together to prepare a draft work instruction, using the template set out in the Annex to this Agreement. To avoid doubt, nothing contained herein shall require NHS Lothian to agree to provide the requested training and/or competency assessment.
- 2.5 Once the parties have agreed a final version of a work instruction, it shall be signed on behalf of each of NHS Lothian and the Recipient, at which point it will constitute a **“Work Instruction”** for the purposes of this Agreement.
- 2.6 NHS Lothian hereby agrees to provide such training and/or competency assessments as are detailed in any and all Work Instructions (the **“Services”**).
- 2.7 Subject to Clause 2.8 below, NHS Lothian hereby agrees to provide the Services to the Recipient:
- (a) in accordance with the relevant Work Instruction;
 - (b) using all reasonable care and skill; and
 - (c) in accordance with all applicable laws.
- 2.8 The parties agree that time shall not be of essence with regard to the provision of the Services, and the Recipient acknowledges that NHS Lothian may need to prioritise its statutory duties over the Services. For the avoidance of doubt, NHS Lothian shall not be considered to be in breach of the terms of this Agreement to the extent it is unable to provide the Services to the Recipient because of the circumstances set out in this Clause 2.8.

3. FEES

- 3.1 The fees payable by the Recipient to NHS Lothian in respect of the provision of the Services, if any, shall be calculated and invoiced in accordance with the provisions of the relevant Work Instruction.
- 3.2 Fees are payable within thirty (30) days of receipt by the Recipient of a valid invoice from NHS Lothian for sums properly due.
- 3.3 In the event of any sum payable to the NHS Lothian in respect of the Services not being paid on the due date, interest on the amount unpaid shall accrue on a day to day basis from the due date of payment until payment is made in full. Such interest shall be at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 and shall be payable on demand.

4. Intellectual Property

- 4.1 The Recipient acknowledges and agrees that NHS Lothian shall retain ownership of all intellectual property rights (including, without limitation, copyright and related rights) subsisting in any materials provided to the Recipient or its staff in connection with the provision of the Services (the **“NHS Lothian Materials”**).
- 4.2 NHS Lothian hereby grants to the Recipient a non-exclusive, royalty-free licence to use the NHS Lothian Materials for the purpose of receiving the Services.



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5. Confidentiality

- 5.1 For the purposes of this Clause 5, the term “**Confidential Information**” means (i) all information relating to the identity, condition or medical history of any individual; (ii) information the disclosure of which would, or would be likely to prejudice substantially the commercial interests of any person, including developments, trade secrets, know-how and other intellectual property; and (iii) all information designated as such by either party in writing and having the necessary quality of confidence.
- 5.2 Each party (the “**Receiving Party**”) shall treat as confidential all Confidential Information obtained from the other party (the “**Disclosing Party**”) and shall not disclose to any third party any Confidential Information obtained from the Disclosing Party, without the prior written consent of the Disclosing Party.
- 5.3 The provisions of Clause 5.2 shall not apply to any information which:
- becomes public knowledge other than by breach of this Clause 5;
 - is in the possession of the Receiving Party without restriction in relation to disclosure before the date of receipt from the Disclosing Party;
 - is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - is independently developed without access to the Confidential Information.
- 5.4 Nothing in this Clause 5 shall be deemed or construed to prevent the Receiving Party from disclosing any Confidential Information of the Disclosing Party to any consultant, contractor or other person engaged by the Receiving Party in connection with the provision of the Services pursuant to this Agreement, provided that it shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause but, to avoid doubt, no signed confidentiality undertaking shall be required from employees of the Receiving Party.
- 5.5 Nothing in this Clause 5 shall be deemed or construed to prevent NHS Lothian from disclosing any Confidential Information of the Recipient:
- to any department of His Majesty’s Government or the Scottish Ministers; and
 - where such Confidential Information is not exempt from disclosure in terms of the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004 and/or any codes or regulations applicable from time to time relating to access to public authorities’ information (“**FOISA**”) (any such exemption to be determined solely by NHS Lothian), the parties acknowledging that NHS Lothian, as a Scottish public authority, is committed to the principle of openness and accountability in contractual arrangements, and the Recipient shall comply with all requests and provide assistance as may be required by NHS Lothian to enable NHS Lothian to comply with its obligations under FOISA.
- 5.6 The provisions of this Clause shall survive termination of this Agreement.

6. Data Protection

- 6.1 For the purposes of this Clause 6, the following words and phrases shall have the meaning set opposite them:

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| “ Commissioner ” | shall have the meaning given in the UK GDPR; |
| “ Controller ” | shall have the meaning given in the UK GDPR; |
| “ Data Subject ” | shall have the meaning given in the UK GDPR; |
| “ Data Subject Request ” | a request made by, or on behalf of, a Data Subject in accordance with access and other rights granted |



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- to the Data Subject pursuant to the Data Protection Legislation in respect of their Personal Data;
- “Data Protection Legislation”** means (i) the UK GDPR; (ii) the DPA 2018 to the extent that it relates to the Processing of Personal Data and privacy; and (iii) any other legislation in force from time to time with regards to the Processing of Personal Data and privacy, which may apply to either party in respect of its activities under this Agreement;
- “DPA 2018”** the Data Protection Act 2018;
- “Personal Data”** shall have the meaning given in the UK GDPR;
- “Personal Data Breach”** shall have the meaning given in the UK GDPR;
- “Processing”** shall have the meaning given in the UK GDPR, and the terms **“Process”** and **“Processed”** shall be construed accordingly;
- “Processor”** shall have the meaning given in the UK GDPR; and
- “UK GDPR”** shall have the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.
- 6.2 At all times throughout the Term, each party shall comply with the Data Protection Legislation in connection with their Processing of Personal Data pursuant to or in connection with this Agreement, including the performance and receipt of the Services. This Clause 5 is in addition to, and does not replace, relieve or remove, a party’s obligations or rights under the Data Protection Legislation.
- 6.3 References in this Clause 5 to the term “Personal Data” shall only apply to Personal Data Processed in the course of the performance of the obligations imposed on NHS Lothian pursuant to or under this Agreement, including but not limited to the provision of the Services.
- 6.4 The parties acknowledge that the factual arrangements between them dictate the role of each party in respect of the Data Protection Legislation. However, the parties anticipate that they shall be independent Controllers in respect of the majority of the Processing carried out in connection with the provision of the Services.
- 6.5 The parties agree that:
- the Recipient will handle any and all Data Subject Requests from the Recipient’s staff to the extent that they relate to the Services. If NHS Lothian receives any such Data Subject Request, NHS Lothian will refer the same to the Recipient within five (5) working days of receipt thereof;
 - the Recipient will be the point of contact for the Recipient’s staff in connection with the Services, for the purposes of matters governed by the Data Protection Legislation;
 - each party shall be responsible for responding to communications addressed to that party from the Commissioner and for participating in consultations with the Commissioner, where required by applicable law, at their instance relating to the Processing of any Personal Data, but that party shall keep the other party promptly and reasonably informed in relation to same; and
 - the Recipient shall be responsible for making any notifications or communications and undertaking any remedial action which may be required to be made or undertaken (as applicable) under Data Protection Legislation following any Personal Data Breach, provided that NHS Lothian notifies the

Recipient without undue delay (in any event, within two (2) working days) after becoming aware of any such Personal Data Breach.

- 6.6 In the rare circumstances where NHS Lothian is acting as a Processor of Personal Data for and on behalf of the Recipient, if, and to the extent, that such circumstances arise, NHS Lothian agrees to comply with the obligations applicable to Processors described by Article 28 of the UK GDPR.

7. Limitation of Liability

- 7.1 Subject to Clause 7.2, neither party shall, under any circumstances whatsoever, be liable to the other party, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of, or damage to, goodwill; or (f) any indirect, special or consequential loss, in each case even if such loss was reasonably foreseeable or within the contemplation of the party or had been brought to its attention.
- 7.2 Nothing in this Agreement shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its officers, directors, employees, agents, or students;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other matter the exclusion or limitation of which is not permitted by law.
- 7.3 The liability of either party under or in connection with this Agreement, and any and all Work Instructions agreed under or pursuant to this Agreement, whether arising in contract, delict, negligence, breach of statutory duty or otherwise shall not exceed One Thousand Pounds Sterling (£1,000).

8. Termination

NHS Lothian may, at any time, terminate this Agreement upon giving one (1) month written notice to the Recipient. Any and all Work Instructions shall automatically terminate upon termination of this Agreement.

9. Obligations on termination

Any and all NHS Lothian Materials in the Recipient's possession or under the Recipient's control shall be returned to NHS Lothian on termination of this Agreement unless otherwise agreed in writing between the parties.

10. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by both parties.

11. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, representation and understandings between the parties, whether written or oral, relating to the subject matter of this Agreement.

12. Governing law

- 12.1 This Agreement shall be governed and construed in accordance with the law of Scotland and the parties agree to submit to the exclusive jurisdiction of the Scottish courts.



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This Agreement is issued to the Recipient in duplicate. Please arrange for both originals to be signed by a duly authorised representative to acknowledge the Recipient's agreement to the terms set out above, and then return one of these to NHS Lothian.

Yours faithfully,

[•]

[Insert full name and title of NHS Lothian Authorised Signatory], Authorised Signatory for and on behalf of Lothian Health Board

We, **[Insert full Recipient Name]**, a company registered in Scotland under the Companies Acts (Registration Number **[Insert company registration number]**) and having its registered office at **[Insert Registered Address]** wish NHS Lothian to provide the Services to us and agree that they are to be provided on the terms set out above.

Signed by Date

(Authorised Signatory)

Print Name

Designation



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