

**INTERIM- ACTING UP AND SECONDMENT  
TRUST CORE POLICY**

<b>APPROVING COMMITTEE(S)</b>	Interim Partnership Board 22.02.2013; Interim Partnership Staffside November 2003 Policies Working Group: 20.1.04, 15.04.08, 18.10.11	Date approved:	October 2010
<b>EFFECTIVE FROM</b>	22 <sup>nd</sup> February 2013		
<b>DISTRIBUTION</b>	Management Committee & HR Managers, Clinical Directorate Admin Managers, HR Policy Working Group, CHL		
<b>RELATED DOCUMENTS</b>	Equal Opportunities Policy (BLT/POL/09595/HR) Information Governance (BLT/POL/29608/COR)		
<b>STANDARDS</b>	N/A		
<b>OWNER</b>	Director of Human Resources		
<b>AUTHOR/FURTHER INFORMATION</b>	Associate Director of Human Resources		
<b>SUPERCEDED DOCUMENTS</b>	Acting Up Policy (BLT/POL/30506/HR)		
<b>REVIEW DUE</b>	October 2014		
<b>KEYWORDS</b>	Acting up and Secondment		
<b>INTRANET LOCATION(S)</b>	<a href="http://bartshealthintranet/Policies-and-Guidelines/Trust-wide-policies.aspx">http://bartshealthintranet/Policies-and-Guidelines/Trust-wide-policies.aspx</a>		

<b>CONSULTATION</b>	<i>Barts Health</i>	Interim Partnership Board
	<i>Barts and the London unit (BLT)</i>	N/A
	<i>Newham University Hospital unit (NUH)</i>	N/A
	<i>Whipps Cross University Hospital (WX)</i>	N/A
	<i>External Partner(s)</i>	<i>Capital Hospitals via the New Hospital Control Team for Barts and the London NHS Trust</i>

[REF] Leave blank for completion centrally

NHS Trust

--	--	--

<b>SCOPE OF APPLICATION AND EXEMPTIONS</b>	<p><b>Included in policy:</b>  <i>For the groups listed below, failure to follow the policy may result in investigation and management action which may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees, and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.</i></p>
	<p>All Trust staff excluding junior doctors.</p>
	<p><b>Exempted from policy:</b>                  This policy does not include permanent secondments or attachments to another employing organisation under Retention of Employment (RoE) arrangements. In such cases the individual will normally continue to undertake the substantive duties of their post while working under the operational management of the host organisation</p>

**Contents**

<b>INTRODUCTION</b> .....	<b>3</b>
<b>APPLICATION</b> .....	<b>3</b>
<b>PART 1: ACTING UP</b> .....	<b>4</b>
<b>TEMPORARY MOVES TO A HIGHER PAY BAND</b> .....	<b>4</b>
<b>Definitions:</b> .....	<b>4</b>
<b>IDENTIFYING AND IMPLEMENTING ACTING UP</b> .....	<b>4</b>
<b>SELECTING A CANDIDATE</b> .....	<b>5</b>
<b>TIME LIMITS</b> .....	<b>5</b>
<b>PAY ARRANGEMENTS</b> .....	<b>6</b>
<b>MANAGERS ROLE</b> .....	<b>6</b>
Support given during the acting up.....	6
Managers Checklist.....	7
<b>TAKING ON EXTRA RESPONSIBILITIES</b> .....	<b>7</b>
<b>PART 2: SECONDMENTS</b> .....	<b>9</b>
<b>SCOPE OF THE SECONDMENTS</b> .....	<b>9</b>
Definitions.....	9
<b>PRIOR TO THE SECONDMENT</b> .....	<b>9</b>
Monitoring Of The Secondment.....	10
Extension Of A Secondment.....	10
Maternity/Adoption/Paternity Leave During A Secondment.....	10
<b>RETURN FROM A SECONDMENT</b> .....	<b>10</b>
Keeping in touch days.....	<b>Error! Bookmark not defined.</b>
Re-induction.....	10
ID Badges.....	11
Statutory and Mandatory Training.....	11
<b>IMPACT OF ORGANISATIONAL CHANGE</b> .....	<b>11</b>
<b>APPENDIX 1</b> .....	<b>12</b>
<b>MODEL SECONDMENT AGREEMENT</b> .....	<b>12</b>

## **INTRODUCTION**

- 1. Barts and The London NHS Trust is committed to developing and retaining its staff. The Trust recognises that Acting Up (Agenda for Change: NHS Terms and Conditions of service Handbook uses the term 'temporary moves to a higher pay band' to describe Acting up), taking on extra responsibilities and secondments can provide staff valuable opportunities for career development, enhancing their skills in preparation for future advancement. Acting up can also help departments minimise potential disruption to service provision.**
- 2. The Trust recognises the benefits of secondments in addressing flexible responses to individual projects or initiatives, covering gaps in service delivery, providing learning opportunities for individuals, mitigating the impact of organisational change as well as sharing resources within health and social care. A secondment can be defined as a temporary loan to another organisation or to a different part of the same organisation, for a specific purpose and for a specific time.**
- 3. The purpose of this policy is to provide guidance on the management of all Acting Up, extra responsibilities and secondments within Barts and The London NHS Trust. It is intended that these opportunities are identified and implemented in a fair and consistent manner. These guidelines should be read in conjunction with the Agenda for Change terms and conditions NHS handbook (Section 6, Career and Pay Progression).**

## **APPLICATION**

- 4. This policy applies to all individuals working in the Trust, in whatever capacity, including those employed by the Trust's private sector partners providing Facilities Management services. CHL and its Service Providers are therefore expected to comply with this policy, as are staff members of other organisations whose employees work within the Trust.**
- 5. A failure to follow the requirements of the policy may result in investigation and management action being taken as considered appropriate. This may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees, and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.**
- 6. Compliance with Trust Policies that have been agreed as Core PFI Policies will be monitored in accordance with the Project Agreement. Any non compliance with these Core PFI Trust Policies by staff employed by either CHL or the Service Providers (including RoE staff), will be addressed in accordance with the procedures detailed in the Project Agreement**

## EXCLUSIONS TO THE POLICY

7. This policy does not include permanent secondments or attachments to another employing organisation under Retention of Employment (RoE) arrangements. In such cases the individual will normally continue to undertake the substantive duties of their post while working under the operational management of the host organisation.

## PART 1: ACTING UP

### TEMPORARY MOVES TO A HIGHER PAY BAND

#### Definitions:

8. *Acting up* - a temporary move to a higher pay band for between 1 and 6 months although this may be extended for a further period where the circumstances are reasonably unforeseeable e.g. unable to fill a vacancy or resignation following maternity leave.
9. *Receiving line manager* – the employee's manager during the acting up.
10. *Substantive line manager* – the employee's original manager.
11. Individuals may act up where it is necessary to fill a post on a temporary basis for a short period (not an exhaustive list) e.g.
  - when a vacancy is unfilled, but being advertised,
  - when a post is being held open for someone who is due to return from maternity leave,
  - to cover a period of extended training,
  - to cover a secondment.

It is the receiving manager's responsibility to inform potential candidates that acting up is not a permanent promotion to the new band. Employees that have acted up are not automatically entitled to be 'slotted into' posts substantively.

12. All managers should regularly review existing arrangements within their area.
13. All employees will retain the right to return to their substantive post or a post that is no less favourable at the end of any acting up period (*See Managing and Supporting Staff Through Change policy for a definition of a no less favourable post*).

### IDENTIFYING AND IMPLEMENTING ACTING UP

14. The receiving manager must determine if acting up is appropriate, in consultation with their workforce specialist. They are responsible for ensuring that a transparent and fair process is followed.

## BLT/POL/30511/HR

15. The receiving manager must decide whether the full range of duties of the post are required to be carried out during the acting period. Where only partial cover of a post is required pay will be determined by job evaluation, which should be done at the earliest opportunity. *See para. 32-36 'taking on extra responsibilities'.*

### SELECTING A CANDIDATE

16. In line with the Trust's recruitment process and to ensure equality of opportunity, all acting up positions must be advertised internally for 1 week via the Trusts usual recruitment methods (NHS Jobs) or internal email. The receiving manager is responsible for ensuring all acting up opportunities within their department are forwarded to Human Resources for advertisement. The only caveat is where there is a natural successor such as a deputy who meet the criteria for the role.
17. The receiving manager is responsible for ensuring all applicants are made aware of the range of duties expected of the post.
18. In situations where the need for cover is urgent e.g. as a result of an unexpected or emergency absence, discussions must take place between the receiving manager and their Workforce Specialist. Under these circumstances temporary measures may be agreed for a maximum of 1 calendar month while the Trust's recruitment process is followed.
19. The receiving manager must ensure the employee selected to act up has been assessed against the requirements for the post using the job description and person specification.
20. Once a decision has been made all appropriate recruitment paperwork should be forwarded to the recruitment administrator.
21. The receiving manager should consider the following:
  - Whether the level of support that is required to enable the individual to fulfil the duties of the post is realistic and can be sustained.
  - Where a number of staff closely match the person specification and are interested in the acting post then it may be appropriate to use a rotational system, where staff act up in turn. This may only be deployed where practicable and depending on the length of the acting period, their workforce specialist can advise on this.

### TIME LIMITS

22. Periods of acting up will only be extended beyond 6 months in **exceptional circumstances**, that must be recorded, following discussion and agreement between the receiving manager, workforce specialist and the employee's substantive line manager. If agreed the line manager must complete a change form for the extended period and submit this to the ESR team to send out a confirmation letter. Where it is foreseeable the

## **BLT/POL/30511/HR**

absence will be longer than six months it may be appropriate to consider a secondment, as an alternative to acting up. Regular communication between the manager and the acting employee is essential to ensure their perception of the acting arrangement is clear.

23. While it is expected that all periods of acting up should be for a fixed period there may be rare occasions where employees acting up may be given notice to terminate the acting up arrangements (e.g. if the post they are acting into has been withdrawn or the substantive post holder's post, if on secondment, has been withdrawn). Under these circumstances the acting employee must receive 4 weeks written notice with clear reasons why the acting up has ended prematurely.

### **PAY ARRANGEMENTS**

24. The pay for the period of the acting up will depend on the employee's current pay in relation to the pay band they are acting into. In accordance with AfC;
25. Pay should be set either at the minimum of the new pay band or, if this would result in no pay increase the first pay point in the band which would deliver an increase in pay.
26. Where acting up results in only one extra pay point the incremental date remains the same. Where the acting up results in more than one extra pay point the incremental date for the period of acting up of the temporary movement becomes the date the move began. Employees will return to their original increment (unless this has changed) following the expiry of the acting period.

### **MANAGERS ROLE**

#### **Authority to approve an Act Up**

27. Managers at Service Manager level have the authority to approve an act up.

#### **Support given during the acting up**

28. Acting up can be a valuable developmental opportunity for staff however it is recognised that it is not a permanent promotion. Consequently managers' need to acknowledge the acting employee will most likely require more support than a substantive post holder. Constant review and open dialogue is necessary and every effort should be made by the manager to support employees and develop their existing skills. To help employee's maximise their time in the acting post managers are encouraged to review the regularity of one to one's (e.g. two to three weekly initially) taking into consideration the length of the acting period and the level of support required. This approach will better enable both managers and employees to identify, highlight and discuss any issues at an early stage. Any relevant training should be offered to the employee.

## **BLT/POL/30511/HR**

29. Any objectives set should be **SMART** (Smart, Measurable, Achievable, Realistic and Time-bound) and in consideration of the amount of time available to the employee in which to achieve them.
30. If the receiving manager has concerns over an employee's performance during the acting period they should seek advice and support from their workforce specialist.
31. Receiving Managers must record their evidenced assessment of the post holder against the Person Specification for the role. This should be copied to the post holder and the substantive line manager where objectives have clearly not been achieved. This should be followed up with constructive feedback highlighting areas for development in particular additional competencies required to the employee in preparation for future applications for promotion.
32. Staff acting up should be supported by the receiving manager and provided the acting period is of sufficient length, should attempt to achieve the foundation gateway for the higher band if appropriate.
33. Managers should offer any applicants not selected for an acting up opportunity the chance to receive feedback. Strengths and areas for training and development should be discussed with the employee and relevant support offered such as job shadowing to better prepare them for future applications.

### **Managers Checklist**

34. At the beginning of the acting up period, the receiving manager should confirm the following to the employee with appropriate liaison with Human Resources:
  - The reasons for acting up being offered;
  - The band of post, starting salary;
  - Any other terms and conditions attached to the acting up;
  - The date on which the acting up arrangements begin and the anticipated length of the acting up period;
  - Receiving managers must complete and send a variation form to the ESR by the payroll deadline to ensure correct payment.

### **TAKING ON EXTRA RESPONSIBILITIES**

35. On some occasions an employee may have the opportunity to undertake some, but not all, the responsibilities of a higher banded job, or they may be asked to take on extra responsibility for a similarly banded job to their own.
36. In these circumstances it is not appropriate to pay an acting allowance and the AFC terms and conditions provide for any additional pay to be determined by job evaluation.
37. The extra responsibilities should be summarised and sent to the workforce specialist with a copy of the employee's existing job description. The additional responsibilities will be evaluated and a relevant level of pay determined, where applicable according to the job evaluation score.



38. The payment of extra responsibility allowances will be for a maximum of six months.

## PART 2: SECONDMENTS

### SCOPE OF THE SECONDMENTS

39. Any employee of Barts and The London NHS Trust is entitled to request a secondment. In making a decision on whether such a request can be accommodated a line manager will give consideration to the following factors (which are not exhaustive); service delivery needs, benefit to Barts and The London NHS Trust, potential benefit to the individual, how the secondee can be covered, duration and any conflict of interest that may exist in agreeing such a secondment (i.e. if an individual is seconded to a competitor, contractor or client of Barts and The London NHS Trust). Secondments will generally range for a period of 6 months to 24 months but may be extended in exceptional circumstances by mutual agreement. In these circumstances, a subsequent secondment agreement will need to be completed by all parties to the agreement and a copy kept in both the local and central employee file.

### Definitions

40. *Employer* – This relates to the organisation who contractually employs the employee.
41. *Secondee* - This is the employee who is seconded
42. *Host Organisation* – This is the organisation that the secondee is seconded to
43. *Substantive line manager* – This is the employees line manager within their own employer
44. *Receiving line manager* – the employee's manager during the acting up.

### PRIOR TO THE SECONDMENT

45. Managers at Service Manager level (or equivalent for corporate directorates) have the authority to approve a Secondment.
46. On appointment the secondee will be asked to sign a secondment agreement a template is attached as Appendix 1. This agreement may be used to second staff in or out of Barts and The London NHS Trust.
47. Where an individual is being seconded into the organisation then the usual recruitment checks will be undertaken by Barts and The London NHS Trust's Recruitment Team in Human Resources prior to any appointment.
48. Where a secondee wishes to work flexibly, they will need to agree this with their receiving line manager in according with the Trust Flexible Working Policy.
49. Where an individual is being seconded out of Barts and The London NHS Trust the individual should also receive written confirmation that they may return to a role on no less favourable terms and conditions of employment.

## **BLT/POL/30511/HR**

50. Where an individual is being seconded out of Barts and The London NHS Trust, they will be required to return any ID badges, uniform and other Trust property to their line manager.

### **DURING THE SECONDMENT:**

#### **Monitoring Of The Secondment**

51. All appraisal and monitoring arrangements will be undertaken jointly by the host employer and the secondee's substantive line manager.

#### **Extension Of A Secondment**

52. Where an organisation wishes to extend a secondment of an individual they should write to the substantive line manager one month prior to the expiry of the secondment. The line manager should consider whether or not such a request can be accommodated and respond in writing.

#### **Maternity/Adoption/Paternity Leave During A Secondment**

53. If an employee wishes to take Maternity/Adoption/Paternity Leave when they are on a secondment, they should inform their receiving manager using their normal leave request processes, who will pay for their leave accordingly.
54. The receiving manager will also need to carry out a risk assessment (where necessary) and make arrangements for cover etc.
55. Where the agreed secondment end date falls during the employee's leave, the substantive line manager, receiving manager and employee should meet to discuss the end or extension of the secondment.

#### **Pay For Long Term Absence (e.g. Sickness or Maternity) During A Secondment**

56. Whoever is paying the individual's regular salary, including instances where this is through a recharge, will also have the responsibility to pay for any absence, including long term absences due to sickness absence, maternity or adoption leave.

### **RETURN FROM A SECONDMENT**

#### **Re-induction**

57. Employees returning from a secondment will need an induction plan to induct them back into their department upon their return. This will be similar to a local induction for new staff and should include the following:
- Update on key changes to the department;
  - Update on main priorities for the department;
  - Training on any new processes or systems that have been put into place in the employee's absence;
  - Where necessary, a period of clinical supervision may be required to support employees returning to clinical duties.
58. Employees who require professional registration in order to practice will need to ensure that their registration is up to date prior to their return from secondment and inform their substantive line manager of their new end date.

59. Where the employee wishes to return to their substantive role on a flexible working agreement, they will need to apply for this in line with the Trust's Flexible Working Policy.

**ID Badges**

60. The substantive line manager will need to make arrangements either for the return of the employee's original ID Badge or for Security to re-issue an ID Badge to the individual with appropriate building/department access levels in good time, so that this is ready for the employee upon their return.

**Statutory and Mandatory Training**

61. Where the employee is returning to their substantive role, their substantive line manager should identify what statutory and mandatory training is out of date and agree with the employee when the most appropriate time is to receive their updates.

**IMPACT OF ORGANISATIONAL CHANGE**

62. Where an employee is affected by organisational change during their secondment it is the substantive post that will determine whether they will be ring-fenced or slotted in to a post in the new structure. The substantive manager should make contact with the individual in line with the Managing and Supporting Staff Through Change Policy.

**APPENDIX 1**

**MODEL SECONDMENT AGREEMENT**

This Agreement is made between:-

1. (“the Employer”)
2. (the “Host”)
3. (“the Employee”)

**WHEREAS**

- (A) The Employee is employed by the Employer under a contract of employment within the terms and conditions of employment of [insert staff group] contract.
- (B) The parties have agreed that for the period from [insert date] for a period of up to 3 months the Employee will provide his services to the Host Employer as [insert job title] pursuant to the terms of this agreement. Details of the specific salary and conditions paid by the Host Employer are attached as Schedule 1.

**IT IS AGREED** as follows:-

1. **Duration**
  - 1.1 This agreement is effective from [insert date] until and including [insert date] (“the Term”), subject to early termination as provided for in clause 6 of this Agreement.
2. **Services to be provided**
  - 2.1 The Employer agrees to supply to the Host Employer, for the duration of the Term, the services of the Employee to undertake the role of [insert job title].
  - 2.2 The Employee agrees, for the duration of the Term, to provide the Services to the Host Employer and will devote so much of his time, attention and ability as is reasonably required from time to time by the Host Employer for their proper performance. The Employee will comply with the Host Employer’s reasonable requirements and instructions as communicated to the Employee from time to time.
  - 2.3 The Employee will report to [insert name and job title], at the Host Employer. The day to day direction and supervision of the Employee and his conduct and actions shall be the exclusive responsibility of, and at the risk of, the Host Employer.

## **BLT/POL/30511/HR**

- 2.4 The Host Employer shall ensure that the duties of the Employee are appropriate to his status and not inconsistent with the terms and conditions of employment of the Employee.
- 2.5 Nothing in this Agreement will be construed to have effect as forming or recording any relationship of employer and Employee between the Host Employer and the Employee and nothing in this Agreement shall constitute or be construed as constituting or establishing any partnership or joint venture between the parties to this Agreement for any purpose whatsoever.
- 2.6 The Host Employer will submit reports on the performance or conduct of the Employee as and when reasonably requested by the Employer. The Host Employer will be responsible for providing the Employer with all relevant management information to enable the Employer to pay the Employee correctly and complete necessary returns (eg. sickness other absence, reportable incidents/accidents).
- 2.7 The Host Employer is responsible for ensuring appropriate insurance cover exists for the Employee.

### **3. Cost**

- 3.1 In consideration of the Services the Host Employer agrees to reimburse the Employer the Employee's salary, together with any other costs reasonably incurred in connection with the supply of the Employee. Details of these costs are referred to in Schedule 1.
- 3.2 The Host Employer will directly reimburse to the Employee travel, phone and living costs associated with his employment.
- 3.3 Following notification in writing from the Employer to the Host Employer, the Host Employer agrees to pay to the Employer a sum equivalent to any annual pay increases made by the Employer to the Employee in its normal manner from the date that any such pay increase takes effect until the end of the Term.

### **4. Invoicing arrangements**

- 4.1 The charges detailed in clause 3 above shall be paid monthly by the Host Employer within 30 days of receipt of an invoice from the Employer.

### **5. Variation of the Agreement**

- 5.1 The Agreement may only be varied with the express written agreement of the parties.
- 5.2 Subject to clause 5.1, the Host Employer may notify the Employer and the Employee in writing no later than one month before the end of the Term, of any extension of the Term of this Agreement that it is seeking.

### **6. Termination of the Agreement**

- 6.1 Subject to earlier termination of this Agreement in accordance with terms hereof, this Agreement will automatically terminate upon the expiration of the Term at which time, the Employer will, subject to the indemnities provided in clause 7, be responsible for all matters relating to the employment of the Employee.
- 6.2 This Agreement may be terminated by any party during the Term on provision of a minimum of three month's written notice to the other parties.
- 6.3 This Agreement may be terminated by notice in writing having immediate effect by either party if the other party hereto commits any material breach of its obligations under this Agreement.
- 6.4 The termination of this Secondment Agreement shall not affect any rights or obligations of the parties which accrued prior to such termination.

## **7. Indemnities**

- 7.1 The Employee will remain employed by the Employer for the duration of his secondment to the Host Employer. It is agreed that the Employer shall be responsible for all income tax liability and National Insurance or similar contributions in respect of any payment to the Employee for the provision of services by the Employee to the Host Employer under this Agreement.
- 7.2 In the event that HM Customs & Excise (or any other relevant authority) determines that any amount of VAT is or has been incorrectly charged by the Employer under or in connection with this Agreement the Host Employer will immediately on receipt of a written request from the Employer, pay or repay to the Employer such amounts of VAT, and where appropriate, provide the Employer with a valid VAT credit note in respect of such amounts of VAT.
- 7.3 The Employer shall incur no liability for loss, damage or injury of whatever nature sustained by the Employee insofar as it arises wholly as a result of negligence or wilful default on the part of the Host Employer or any of its Employees.
- 7.4 The Host Employer hereby indemnifies the Employer against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages and demands arising out of or resulting from breach of this Agreement by the Employee or any act or omission or default of the Employee including without limitation:
  - any loss of or any damage to any property;
  - all financial loss;
  - those resulting from any breach by the Employee of any intellectual property rights owned by the Employer or a third party;
  - injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Employee, whether resulting in material or

financial loss or damages or death or injury to persons or any other loss or damage whatsoever.

7.5 The Host Employer hereby indemnifies the Employer against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Employer which are attributable to any act or omission by the Host Employer or any other person for whom The Host Employer are liable arising out of:-

- the employment or termination of employment of the Employee during the Term; or
- the engagement or termination of engagement of the Employee under the terms of this Agreement during the Term; or
- any breach by the Host Employer of any collective agreement or other custom, practice or arrangement (whether or not legally binding) with a trade union, staff association or Employee representatives in respect of the Employee including for the avoidance of doubt liability for personal injury, accident or illness suffered or incurred in whole or in part during the Term, breach of contract or in tort or under any legislation applicable in the United Kingdom, for any remedy including, without limitation, pursuant to the Employment Rights Act 1996, or for unfair dismissal, redundancy, statutory redundancy, equal pay, sex, race or disability discrimination or any relevant statutory provision.

7.6 If the Employer suffers any claims, liabilities, actions, proceedings, costs, losses, damages or demands (“Loss”) in respect of which the Host Employer is liable to make a payment to the Employer under clause 7.5 or 7.6 (“the Indemnity Payment”) and the Indemnity Payment is taxable in the Employer’s hands but the Loss is not deductible in calculating that tax liability, then the Host Employer shall pay such additional amount to the Employer as the Employer’s tax adviser certifies is necessary to put the Employer in the same net of tax position as it would have been if the Indemnity Payment was not taxable in the Employer’s hands and the Loss was not deductible by the Employer for tax purposes.

## **8. Conduct of Claims**

8.1 If the Host Employer becomes aware of any matter that may give rise to a claim against the Employee, notice of that fact shall be given as soon as possible to the Employer.

8.2 If the Employer becomes aware of any matter that may give rise to a claim against the Employee, notice of that fact shall be given as soon as possible to the Host Employer.

8.3 Without prejudice to the validity of the claim or alleged claim in question, the Host Employer shall allow the Employer and its professional advisors to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose, the Host Employer shall give, subject to being paid all reasonable costs and expenses, all such information and assistance, including



access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents and records, as the Employer or its professional advisors may reasonably request PROVIDED THAT nothing in this clause 8.2 shall be construed as requiring the Host Employer to disclose any document or thing the subject of any privilege. The Employer agrees to keep all such information confidential and only to use it for such purpose.

8.4 No admission of liability shall be made by or on behalf of the Host Employer and any such claim shall not be compromised, disposed of or settled without the consent of the Employer.

8.5 The Employer shall be entitled in its absolute discretion to take such action as it shall deem necessary to avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third parties) in the name of and on behalf of the Host Employer and to have the conduct of any related proceedings, negotiations or appeals.

**9. Place of work**

9.1 The Employee will normally be expected to deliver the Services at [insert location] and such other locations as may be reasonably required of the Host Employer.

**10. Continuation of Service**

10.1 Continuation of service will not be broken via a secondment.

**11. Hours of work**

11.1 The Employee will supply the Services within the terms of employment for [insert staff group] agreement normally for 37.5 hours per week. In addition, subject to the Working Time Regulations, the Employee may be required to work at other times as may be necessary for the proper performance of his duties.

**12. Health and Safety**

12.1 The Host Employer shall be responsible for ensuring that the Employee observes its health and safety policies and procedures and maintains a safe method of working. The Employee will observe all reasonable safety instructions given to him from time to time by the Host Employer.

**13. Confidential Information**

13.1 It is acknowledged that to enable him to provide services during the Term the Host Employer will provide the Employee with information of a highly confidential nature which is or may be private, confidential or secret, being information or material which is the property of the Host Employer or which the Host Employer is obliged to hold confidential include, without limitation, all official secrets, information relating to the working of any project carried on or used by the Host Employer, research projects, strategy documents, tenders, and any proprietary Primary Care Trust information, (any and all of the foregoing being "Confidential Information").

- 13.2 The Employee agrees to adopt all such procedures as the Host Employer may reasonably require and to keep confidential all Confidential Information and that the Employee shall not, (save as required by law) disclose the Confidential Information in whole or in part to anyone and agrees not to disclose the Confidential Information other than in connection with the provision of the Services. The Employer will not, however, be liable for any failure on the part of the Employee to observe this requirement.
- 13.3 Any document, including without limitation, notes, memoranda, diaries, correspondence, computer disks, facsimiles, telexes, reports or other documents or data of whatever nature or copies thereof created by the Employee in the course of the Term will be and remain the property of the Host Employer and the primary care trust shall be the absolute beneficial owner of the copyright in any such document.
- 13.4 The Employee agrees that he shall at any time during the continuance of this agreement if so required by the Host Employer and in the event of the termination of this agreement for whatever reason (whether lawfully or otherwise) surrender to the Host Employer all original and copy documents in his possession, custody or control (including, without limitation, all books, documents, papers, materials) belonging to the Host Employer or relating to the business of the Host Employer together with any other property belonging to the Host Employer. The Employer will not, however, be liable for any failure on the part of the Employee to observe this requirement.
- 13.5 The obligations under this agreement apply to all and any Confidential Information whether the Confidential Information was in or comes into the possession of the relevant person prior to or following this agreement and such obligations shall be continuing obligations throughout the continuance of this agreement and at all times following its termination but shall cease to apply to information which may come into the public domain otherwise than through unauthorised disclosure by the Employee.

**14. Intellectual Property**

- 14.1 All intellectual property rights associated with any intellectual property arising from the Services shall belong to the Host Employer.

**15. Grievance and discipline**

- 15.1 All matters of grievance and discipline shall be dealt with by the Employer in accordance with its normal disciplinary procedures and the Host Employer will be notified where such action is instigated by the Employer.
- 15.2 The Host Employer agrees to co-operate fully with the Employer to resolve grievances raised by the Employee.
- 15.3 The Host Employer undertakes to report to the Employer, at the earliest possible opportunity, all matters which may require disciplinary action by the Employer, and to participate promptly in any subsequent action which may be necessary.

**16. Periods of leave**

- 16.1 The Employee shall book all leave to which he is entitled with the Host Employer.
- 16.2 In the event of sickness, the Employee shall notify both the Employer and the Host Employer in accordance with the agreed procedure of each party of which the Employee has been advised.

**17. Assignment**

- 17.1 Subject to clause 16.2, the parties may not assign, transfer or subcontract or in any other manner make over any third party the benefit and/or burden of this Agreement without the prior written consent of the other parties.
- 17.2 The Host Employer shall be entitled to assign the benefit and burden of this Agreement to any successor organisation without consent.
- 17.3 Subject to clause 16.1 this Agreement shall be binding upon the successors and assignees of the parties hereto and the name of the party appearing herein shall be deemed to include the names of its successors and assignees.

**18. Choice of Law and Submission to Jurisdiction**

- 18.1 This Agreement shall be governed by and interpreted in accordance with English Law.
- 18.2 The parties submit to the non-exclusive jurisdiction of the English Courts with regard to any dispute or claim arising under this Agreement but this Agreement may be enforced by any party in any Court or competent jurisdiction.

**19. Prior Agreements**

- 19.1 This Agreement shall be in substitution for any previous agreement, whether by way of letter, agreements or arrangements, whether written, oral or implied, relating to the Services of the Employee, which shall be deemed to be terminated by mutual consent as from the date of this Agreement.

**20. Accrued Rights**

- 20.1 The expiration or termination of this Agreement however arising shall not prejudice any claim which any party may have against another in respect of any pre-existing breach of, or contravention of, or non compliance with any provision of this Agreement, nor shall it prejudice the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to or has the effect of coming into, or continuing in force on or after such expiration or termination.
- 20.2 No waiver by either party, other than one made in writing, of any breach by the other party of any provision of this Agreement and no failure delay or forbearance by any party in exercising any of its rights, shall be taken to be a waiver of such breach or right which will prevent the party from later taking any action or making any claim in respect of such breach or right.

**21. Illegality**

21.1 If any provision or term of this Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including without limitation, by reason of provisions of any legislation or by reason of any decision of any court or other body having jurisdiction over the parties, such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted in the jurisdiction in question PROVIDED always that if any such deletion substantially affects or alters the commercial basis of this Agreement, the parties shall negotiate in good faith to amend and modify the provisions or terms of this Agreement as may be necessary or desirable in the circumstances.

**22. Notice**

22.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by:

- first class post; or
- registered post; or
- facsimile or other electronic media to a party at the address or relevant telecommunications number for such party or such other address as the party may from time to time designate by written notice to the others.

22.2 Any notice or other document shall be deemed to have been received by the addressee:

22.3 two working days following the date of despatch of the notice or other documents by post; or

22.4 where the notice or other document is sent by hand or is given by facsimile or other electronic media simultaneously with the delivery of the transmission (and it shall be sufficient to show proof of delivery that it was despatched).

I hereby agree the above conditions on behalf of [insert name of organisation]:-

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

I hereby agree the above conditions on behalf of the Host Employer:-

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

**BLT/POL/30511/HR**

I hereby agree to the above terms and conditions:-

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_