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LUTON AND DUNSTABLE UNIVERSITY HOSPITAL

RECRUITMENT, ADVERTISING AND SELECTION POLICY

1. INTRODUCTION

- 1.1. The NHS Plan sets objectives for increasing the NHS workforce to support the delivery of an improved health service, improved patient access and choice, shorter waiting times, and improved standards of care.
- 1.2. Successful recruitment depends upon finding people both with the necessary skills, expertise and qualifications and the ability to make a positive contribution to the values and aims of the organisation.
- 1.3. The Trust wishes to ensure that arrangements are in place to enable effective recruitment whenever a vacancy occurs and to recruit the best person for each vacancy regardless of gender, race, sexual orientation, disability or age.
- 1.4. To support this policy, guidelines have been included to ensure that a consistent, fair and safe approach to recruitment is adopted throughout the Trust.

2. AIM OF POLICY

- 2.1. This policy aims to ensure that there is an effective process for the recruitment and retention of competent people to deliver organisational objectives, who make a positive contribution to the values and aims of the organisation and to the NHS as a whole.
- 2.2. It aims to define standards of good practice and provide practical guidance to managers in recruitment, advertising and selection.

3. OBJECTIVES OF POLICY

- 3.1. To ensure a consistent and corporate approach to recruitment, advertising and selection which will:
 - ensure equality of opportunity in employment
 - enhance the reputation of the Trust as an employer
 - improve the quality and safety of selection decisions
 - contribute towards the quality of working life for staff employed within the Trust

4. SCOPE OF POLICY

- 4.1. This policy will apply to all posts within the Trust excluding medics and to anyone wishing to apply to work within the Trust in whatever capacity e.g. prospective employee, volunteer, student, work placement, honorary contract holder, locum etc. It includes permanent, fixed term, temporary and casual posts. It provides a framework for managers who are recruiting, all of whom are required to adopt the standards and procedures set out in this policy.

5. ROLES AND RESPONSIBILITIES

5.1 MANAGERS

Managers will undertake to ensure that:

- they operate this policy objectively and fairly, regardless of personal characteristics, in line with the Trust's Equality & Human Rights policy;
- They comply with the principles and procedures outlined in this document.

5.2 EMPLOYEES

Employees are required to:

- have read and will comply with all relevant Trust policies, procedures and guidance applicable to their work and understand the required standards of conduct and behaviour.

5.3 RECRUITMENT AND RESOURCING TEAM

- 5.3.1 The Recruitment and Resourcing Team are aligned to Divisional Business Units and are responsible for providing professional advice on this policy.
- 5.3.2 The Recruitment and Resourcing Team must be involved in all advertising, recruitment and selection activities.
- 5.3.3 The Recruitment and Resourcing Team will keep records of any recruitment activity and its outcome. Non personal and statistical information may be used for monitoring or reporting purposes.
- 5.3.4 The Recruitment and Resourcing Team are responsible for training Trust Managers on the key principles of this policy as part of the Management Basics Programme.
- 5.3.5 Monitoring of the policy and procedure will be undertaken by the Deputy Director of HR. The Recruitment and Resourcing Team are responsible for the ownership of this policy and subsequent reviews.

6. EQUALITY OF OPPORTUNITY

- 6.1. This policy complements the Trust's Equality and Human Rights Policy by ensuring that all individuals are treated equally and fairly and that decisions on recruitment and selection are based on competencies, qualifications, skills and objective job related criteria.
- 6.2. This policy also supports an equality culture within which our workforce is representative of the people it serves and one in which people are treated as individuals by recognising, accepting and valuing differences.
- 6.3. All employment legislation and Codes of Practice referred to in the Trust's 'Single Equality Scheme' Policy are relevant to this policy.
- 6.4. Recruitment and promotion procedures will be regularly monitored to identify where and how they can be improved, and to enable the planning of potential positive action initiatives for under-represented groups.

- 6.5. Equality of access to opportunities for the development of skills should apply regardless of hours worked or any other non-standard term in the contract of employment.
- 6.6. Selection should always be a competitive process, except where a member of staff is being re-deployed to accommodate their reasonable adjustment needs, health needs, maternity, training, mitigate the risk of compulsory redundancies or other similar situation in accordance with the Trusts Management of Change Policy.
- 6.7. All applicants, where they request it, are entitled to know the reasons why their application has been unsuccessful.

7. FURTHER LEGAL OBLIGATIONS

- 7.1. The Trust is committed to safeguarding and promoting protection procedures to safeguard children, young people and vulnerable adults. All employees and volunteers working within the Trust have a responsibility for safeguarding and promoting the welfare of children and vulnerable adults. The adoption of this policy will support the Trust to comply with its legal obligations to protect children (under the 'Protection of Children's Act 1999) and vulnerable adults. The Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, the 'Rehabilitation of Offenders Act 1974', 'Immigration and Asylum Act', the Data Protection Act 1998 and NHS Employers Employment Check Standards, which provides guidance on pre and post appointment checks for all people working in the NHS, incorporating guidance on verification of identity, qualifications and professional registration (e.g. NMC)

8. SAFE RECRUITMENT

- 8.1. On 1st December 2012 the Criminal Records Bureau (CRB) merged with the Independent Safeguarding Authority (ISA) to become the Disclosure and Barring Service (DBS). The DBS is a non-departmental public body sponsored by the Home Office designed to assist employers to make safer and more informed recruitment decisions by enabling recruiting organisations to access relevant information about applicants who may have an unsuitable background for taking a particular type of work – either paid or voluntary. This policy should be read in conjunction with the Trust policy entitled 'Disclosure & Barring Service Policy'
- 8.2. The Trust endeavors to establish a threshold of entry to paid and voluntary work that is high enough to deter committed abusers from working in posts where the normal duties include provision of care or access to children (i.e. those aged 18 or under) and/or vulnerable adults.
- 8.3. Where a risk assessment indicates that a post qualifies for a DBS disclosure, the Trust has a responsibility to make the necessary pre-appointment checks which are available via the DBS - this will involve positions where the postholder has access to children or vulnerable

adults in the course of his/her normal duties. (Where posts involve provision of care to children this is a legal responsibility).

- 8.4. In such circumstances, recruiting managers will be required to identify relevant posts to an officer within the Recruitment and Resourcing Department who has been nominated to facilitate DBS checks. This must take place prior to the commencement of any recruitment campaign. Until the mandatory checks have been made, access to patients of 18 years and under will not be permitted.
- 8.5. Selection panel members for posts which are eligible for DBS disclosure should demonstrate vigilance during the selection process, and in particular must be satisfied that any employment gaps are justified.

9. AGENCY STAFF

- 9.1. Recruitment agencies who provide staff who care for patients must demonstrate to the Trust that their selection process is equally as stringent as the pre-appointment checks that are conducted by the Trust. Managers must obtain written confirmation to this effect and Agencies should be informed that their performance will be monitored in line with local arrangements.
- 9.2. Recruitment agencies used for finding permanent or temporary staff should be informed of the Agenda for Change Equal Opportunities Terms and Conditions and be expected to follow fair and objective selection procedures.

10. APPLICANTS WHO HAVE A DISABILITY

- 10.1. Under the Equality Act (2010) the definition of a disabled person is one who has a mental or physical impairment which substantially impairs their ability to carry out normal day-to-day activities which has lasted, or is likely to last, for a period of 12 months or more.
- 10.2. This policy supports the statutory guidance, codes of practice and moral principles of the Act and seeks to establish the following:
 - employment practices which do not unjustifiably discriminate against disabled job applicants or employees on the grounds of their disability
 - that consideration is given to making 'reasonable adjustments' to working arrangements or the working environment
- 10.3. Examples of reasonable adjustments could be:
 - modifying procedures for testing or assessment
 - holding selection interviews in a different location
 - making adjustments to premises, equipment, work stations
 - adjustments to policies or procedures

- Altering working hours.
- reallocating particular duties within the team
- arranging for additional training
- modifying instruction manuals
- conducting a disability audit of access within the department

10.4. For further advice on consideration or facilitation of reasonable adjustments either at interview or in the work-place the recruiting manager will liaise with senior representatives of the Recruitment and Resourcing Department and with the Occupational Health Department. Where necessary, an external disability adviser shall reach agreement on the feasibility and provision of such an adjustment.

10.5. In partnership with our local disability support organisations the Trust works towards a supportive recruitment process for people with disabilities.

11. GUARANTEED INTERVIEW SCHEME

11.1. This is a supported scheme whereby any applicant who considers themselves to have a disability can choose to apply via the Guaranteed Interview Scheme. Disabled applicants who meet the 'essential' criteria in a Person Specification will be guaranteed a selection interview. Managers will be made aware of any applicants falling into this category by the Recruitment and Resourcing Department.

12. WHEN A VACANCY OCCURS

12.1. A vacancy may arise either by the creation of a new post or when an existing post becomes vacant following the resignation or dismissal of an existing employee.

When a post becomes vacant, the manager should assess the requirement for the post e.g. service needs and review of departmental structure.

12.2. Where recruitment activity is found to be appropriate, the manager must obtain appropriate approval prior to any advertisement being placed. No post will be offered for advertisement until appropriate authorisation has been received by the Recruitment and Resourcing Department.

12.3. All requests for advertisement must be supported by a current and accurate Job Description which identifies the duties of the post and a Person Specification which determines the essential and desirable criteria for selection. Where managers make significant changes to existing job descriptions/person specifications, or create entirely new documentation e.g. for a new role, the appropriate banding of the role will be determined

by the Agenda for Change Job Evaluation Process. Managers must liaise with a Human Resources representative for advice.

12.4. For an overview of the process refer to Appendix 1.

13. ADVERTISING

- 13.1. All vacant positions within the Trust must adhere to the Trust's Equality and Human Rights Policy and be advertised in open competition except where a member of staff is being re-deployed to accommodate their disability, health needs, maternity, training or other similar situation.
- 13.2. External advertising is encouraged to provide a wider selection of candidates with the necessary skills and expertise. All vacancies will appear on NHS Jobs (the NHS recruitment website), except in circumstances where the Recruiting Manager chooses to advertise a vacant post for internal applicants only - reasons might include secondment opportunities aimed at internal candidates for developmental purposes, or where it is known that there are a number of suitably qualified and experienced internal candidates. All advertisements can be accessed via the Trust Intranet.
- 13.3. Where it can be justified that posts should not be advertised nationally, i.e. for reasons outlined above, the vacancy will be advertised on internal section of NHS Jobs. This is accessed via the Trust Intranet. In recognition that not all staff have easy access to the Intranet, paper copies of vacancy listings will be available from the Recruitment and Resourcing Department upon request.
- 13.4. All advertisements for positions within the Trust must be presented with an organised and professional image to both potential recruits and the community served. All recruitment adverts should be placed by the Recruitment and Resourcing Department.
- 13.5. Advertising should be well planned to effectively target the desired audience. A variety of different methods should be considered e.g. by blending both online and offline media. The latter might include the use of professional journals; local media -press and radio; recruitment fairs and yearbooks. The Recruitment and Resourcing Department should provide advice on advertising options.
- 13.6. Value for money considerations will be key to the development of any recruitment advertising campaign.
- 13.7. The use of advertising within the national press (e.g. Times, Sunday Times, Daily Telegraph, Guardian; Independent) is prohibited unless a clear business case confirms that this is the most cost effective media.
- 13.8. Advertising in Year Books is based on the recommendations of professional staff groups and the approval of the Recruitment and Resourcing Business Partner
- 13.9. Recruiting Managers should supply a fully completed NHS Standard

Advertisement Requisition form (available on the Trust Intranet) to the Recruitment and Resourcing Department, which should include proposed advertising media and advertising schedule. The Recruiting Manager should also give consideration to specific requirements for selection e.g. assessment exercises. Additionally, any special information to be sent out in the application pack must be enclosed e.g. departmental structure and further particulars about the work area.

14. ENQUIRIES AND APPLICATIONS

- 14.1. All response handling will be conducted within the Recruitment and Resourcing Department.
- 14.2. In accordance with Department of Health approach, external applicants will be encouraged to use the online application form. Hard copy application forms and application forms in an alternative format are available upon request from the Recruitment and Resourcing Department.
- 14.3. An application form will be completed by all applicants to ensure that essential information is collected in a consistent way in support of equal opportunities. The additional use of curricula vitae is encouraged for senior posts.
- 14.4. Information collected for equal opportunities monitoring will be used only for this purpose and kept separate from information on which selection decisions will be based.
- 14.5. Closing dates for advertised posts will be clearly displayed, and posts will close at 12 noon on the date of closure. The Trust reserves the right to close adverts early if the required numbers of applications have been received. Where possible, the date of interview should also be stated on the advertisement.
- 14.6. When planning the selection process, Recruiting Managers should give consideration to the use of a range of selection tools including assessment exercises, psychometric tests and panel interviews. The choice of approach must be relevant to the requirements of the post and must be discussed and agreed with a representative from Recruitment and Resourcing Department. (NB Psychometric Assessment may only be conducted by trained and qualified staff within the Human Resources Department. Psychometric assessment used within the Trust should only be selected by a trained user and conducted according to the ethical criteria established by the British Psychological Society and CIPD code of practice.)

15. SHORT LISTING

- 15.1. Short listing must be undertaken by a minimum of two people, both of whom will be participating members of the selection interview panel and will have received 'Recruitment and Selection' training.

- 15.2. The Recruiting Manager, usually designated the Chair of the interview panel, will be provided with a Short listing Form which must be completed so that short listing decisions are communicated clearly to the Recruitment and Resourcing Department. Recruiting Managers should arrive at the short list by matching the skills, qualifications and experience of each applicant to the requirements of the post as outlined in the Job Description and Person Specification.
- 15.3. Application forms will be available for short listing the following working day after the closing date of the advertisement. Recruiting managers must return their short list to the Recruitment and Resourcing Department as soon as possible, but no longer than five working days later.
- 15.4. Short listed applicants will be invited to interview by means of a letter or via email. The Recruitment and Resourcing Department do not routinely contact unsuccessful applicants; at application stage candidates are advised that if they have not heard from the Trust within two weeks of the date of closure that they have not been successful.

16. GUIDANCE FOR THE CHAIR OF AN INTERVIEW PANEL

- 16.1. When appointed as the Chair of a panel the following considerations should be given to the interview process.
- 16.2. Interview panels should comprise at least two members of staff who have delegated authority to recruit within their Directorate and one of whom must have attended Recruitment and Selection training or refresher training within the past three years. It is the responsibility of individuals to ensure their competence by updating their skills and/or attending this training.
- 16.3. The panel should consider potential conflicts in the interview process: It may be that a close colleague has applied for the post, a relative has been short listed for a post, or a member of the panel has unwittingly given candidates advice on a presentation that is being used as part of the assessment exercise. In cases of potential conflict the chair should seek advice from a senior member of the Recruitment and Resourcing Department.
- 16.4. Members of the Recruitment and Resourcing Department are available to sit on the panel where it is considered necessary. However, there should be no reason to seek such support unless the Chair of the panel considers particular circumstances apply, such as an application from an internal member of staff who may not have been successful at a previous interview or where the post has been banded at Band 6 or above and there is a requirement for a specialist level of recruitment skills within the panel.
- 16.5. It is essential that the panel checks candidates' qualifications where candidates are asked to bring certificates with them. Additionally, the panel must check that the referee details are acceptable i.e. two

referees who must be the candidate's current/most recent line manager (refer to section 21 of this policy).

- 16.6. **Making a Decision:** At the end of the selection process candidates will have met the requirements of the post, or not, when measured against the essential criteria outlined on the person specification. Where more than one candidate meets the required standards as laid out in the person specification then the scores used in response to interview questions, or skills demonstrated in assessment exercises, will inform the view of each individual member of the panel as to who is the best candidate for the post. The Chair of an interview panel must ensure that consensus is reached when making an appointment decision. On the rare occasions where that may not be possible then the Chair should accept the majority decision. Where the panel decides to delay a decision until the next day in order to reflect on the issues, it is important that all panel members communicate during that day and a majority decision is reached before candidates are informed.
- 16.7. Panel members are required to complete interview assessment and summary notes of the interview and selection process, clearly stating the decisions the panel have made. The interview and summary notes, including any rough notes made, must be returned to the Recruitment and Resourcing Department and held on file for a period of twelve months to support any claims against unfair selection during the recruitment process. In compliance with the Data Protection Act, information should only be obtained and recorded where it is essential to the recruitment decision. Each panel member must be clear that they agree with the outcomes listed before signing.
- 16.8. **Offering Salaries:** It is the responsibility of the Chair to offer a salary to the successful candidate. Any salary offer must be in accordance with Agenda for Change terms and conditions, and the Trust's Salary on Appointment, Transfer, Promotion and Temporary Appointments Policy. Further guidance will be available from the Recruitment and resourcing Department. In addition, it is important to remember when offering a post to a candidate that this will be a provisional offer and the final offer will be dependent upon the receipt of pre-appointment checks that are satisfactory to the Trust.
- 16.9. **Notifying the candidates:** The Chair of the interview panel will notify all candidates of the outcome of the selection and then return all the interview notes and minutes, fully completed, to their Recruitment Officer.

17. PRE- APPOINTMENT CHECKS

- 17.1. Pre-appointment checks will be made in accordance with NHS Employers standards as detailed in ['NHS Employment Check Standards'](#). All pre-employment checks will be applied for and

coordinated by the Recruitment and Resourcing Department. These will include:

- **Verification of identity** in accordance with [NHS Employers guidelines](#);
 - **Right to work checks** in accordance with [NHS Employers guidelines](#);
 - **Professional registration and qualification checks** in accordance with [NHS Employers guidelines](#) and the Trust's Registration of Professional Staff Policy;
 - **Employment History and reference checks** in accordance with [NHS Employers guidelines](#);
- Recruiting Managers should check references for information on sickness absence and should calculate the equivalent Bradford Score on the information given**
- **Disclosure & barring checks** in accordance with [NHS Employers guidelines](#) and the Trusts Disclosure & Barring Policy; and
 - **Occupational Health checks** in accordance with [NHS Employers guidelines](#). Recruiting Managers will be required to check information given on occupational health correspondence and sign to say they have seen this information.

17.2. The Recruitment Officer will send out conditional offer letters and undertake all pre-appointment checks. Once checks have been completed the Recruiting Manager will sign to say they are happy with the references received and liaise with the Recruitment Officer and applicant to agree a suitable start date and reporting details. The Recruitment Officer will then send out an unconditional offer letter confirming these details.

18. PAPERWORK FOR STAFF WHO ARE NEWLY APPOINTED

- 18.1. Recruiting Managers must complete a 'Staff Appointment Form' with the new employee, which must then be forwarded to the Recruitment and Resourcing Department and UHB Payroll Services in a timely manner to ensure that salary will be paid in the first month of employment. In circumstances where payroll deadlines have been missed, managers must liaise with the staff member concerned to agree a mutually acceptable arrangement.
- 18.2. In accordance with the Immigration and Asylum Act and NHS Employers guidance on 'right to work checks', managers must take and retain a photocopy of the paperwork that the new employee supplies as evidence of their eligibility to work in the UK.

19. INDUCTION

- 19.1. The Trust recognises that a well planned Induction Programme is essential to the well being of a new employee and is likely to

increase the effectiveness and speed of their contribution to the team.

- 19.2. **Local Induction:** This should be arranged by Heads of Department and should include the establishment of short, medium and long term objectives and discussion of training needs in accordance with the objectives of the post. Additionally, managers will have responsibility for communication of department arrangements/facilities; tour of essential site areas; health and safety requirements and departmental/ward working relationships. For more information and useful checklists, refer to 'Policy and Guidelines for the Induction of All Staff'.
- 19.3. **Trust Induction:** All employees who are new to the Trust will attend the Trust's Induction Programme, which includes statutory training, within the first month of employment. The appropriate Head of Department will record the new employee's attendance at induction on their personal file.

20. MONITORING AND EVALUATION

- 20.1. The Recruitment and Resourcing Department will monitor and evaluate the entire recruitment process to ensure adherence to both this policy and the Trust's Equality and Diversity Policy.
- 20.2. In accordance with the above policy, equality monitoring data is detailed annually in the Annual Report.
- 20.3. Annual Fit and Proper Persons Declaration completed for all Directors and Non-Executive Directors.
- 20.4. The Deputy Director of Human Resources will ensure the security of equality monitoring data, which will only be disclosed externally where the Trust is statutorily required to provide such information.
- 20.5. Bi-monthly reports submitted to the Board around recruitment activity.

21. EXTERNAL RECRUITMENT AGENCIES

- 21.1. The Trust may, from time to time, enter into a contract for the provision of services from external recruitment agencies. When managers consider agency use necessary and appropriate, they should liaise with a representative from the Recruitment and Resourcing Department. This policy lays down standards which must be established and maintained from these providers of service.
- 21.2. External recruitment agencies should reflect the aims and objectives of the Trust and provide evidence that they are experienced in the appropriate labour market. Where possible, approved agencies should be used i.e. those that are approved by the recommended frameworks. International Recruitment Agencies must comply with Department of Health and Trust standards.

- 21.3. Where appropriate a specification for service should be prepared, identifying the responsibilities of the agency and the Trust, the selection process required, the agreed time-frame and any costs. Caution must be exercised as agency costs (for both appointment to a permanent post and conversion from temporary to permanent posts) can be high. It is therefore essential that managers confirm costs before entering into any agreement. Guidance should be sought from the Recruitment and Resourcing Team prior to engaging an agency worker.
- 21.4. The recruitment agency will be provided with documents necessary to complete their task, i.e. information regarding the Trust or directorate, and an accurate job description and person specification.
- 21.5. Any pre-appointment checks undertaken by recruitment agencies must be no less rigorous than those completed by the Trust. Managers must satisfy themselves of this by checking copies of relevant documentation.
- 21.6. All external recruitment agencies must adhere to the Trust's policies on professional registration and provide appropriate evidence of this on commencement of staff placement.

22. RECRUITMENT OF DIRECTORS AND NON-EXECUTIVE DIRECTORS

- 22.1 All Executive and Non-Executive, permanent, interim and Associate Director level appointments will meet the 'fit and proper persons test' standards as detailed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. This will ensure that individuals are fit and proper to carry out their roles (Appendix 2)
- 22.2 Employment checks are undertaken in accordance with NHS Employers pre-employment check standards and include:
 - Two references, one of which must be most recent employer
 - Qualification and professional registration checks
 - Right to work checks
 - Identity checks
 - Occupational health clearance
 - DBS checks (where appropriate)

In addition, the following checks will also be undertaken:

 - Declarations of fitness by candidates (Appendix 3)
 - Search of insolvency and bankruptcy register
 - Search of disqualified directors register
- 22.3 Once all pre-employment checks are satisfied revised contracts specific to the post will be issued (Appendix 4,5,6 and 7)

23. RECKONABLE NHS SERVICE

23.1 In accordance to Section 12 of the Agenda for Change Terms and Conditions Handbook, an employee's continuous previous service with any NHS employer counts as reckonable service in respect of NHS agreements on redundancy, maternity, sick pay and annual leave.

The Trust has the discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be extremely relevant to the employment with the Trust. Such decisions must be made at the recruitment stage and cannot be considered at a later stage once the employment has commenced.

When an employee who has been transferred out of NHS employment to a non-NHS provider returns to NHS employment, their continuous service with a new non-NHS employer providing NHS funded services, will be counted as reckonable in respect of NHS agreements on sick pay, annual leave and incremental credit.

23.2 Re-appointment of previous NHS employees

On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to annual leave. This will be verified by an electronic Intra-Authority Transfer (IAT) which will be completed at the recruitment stage.

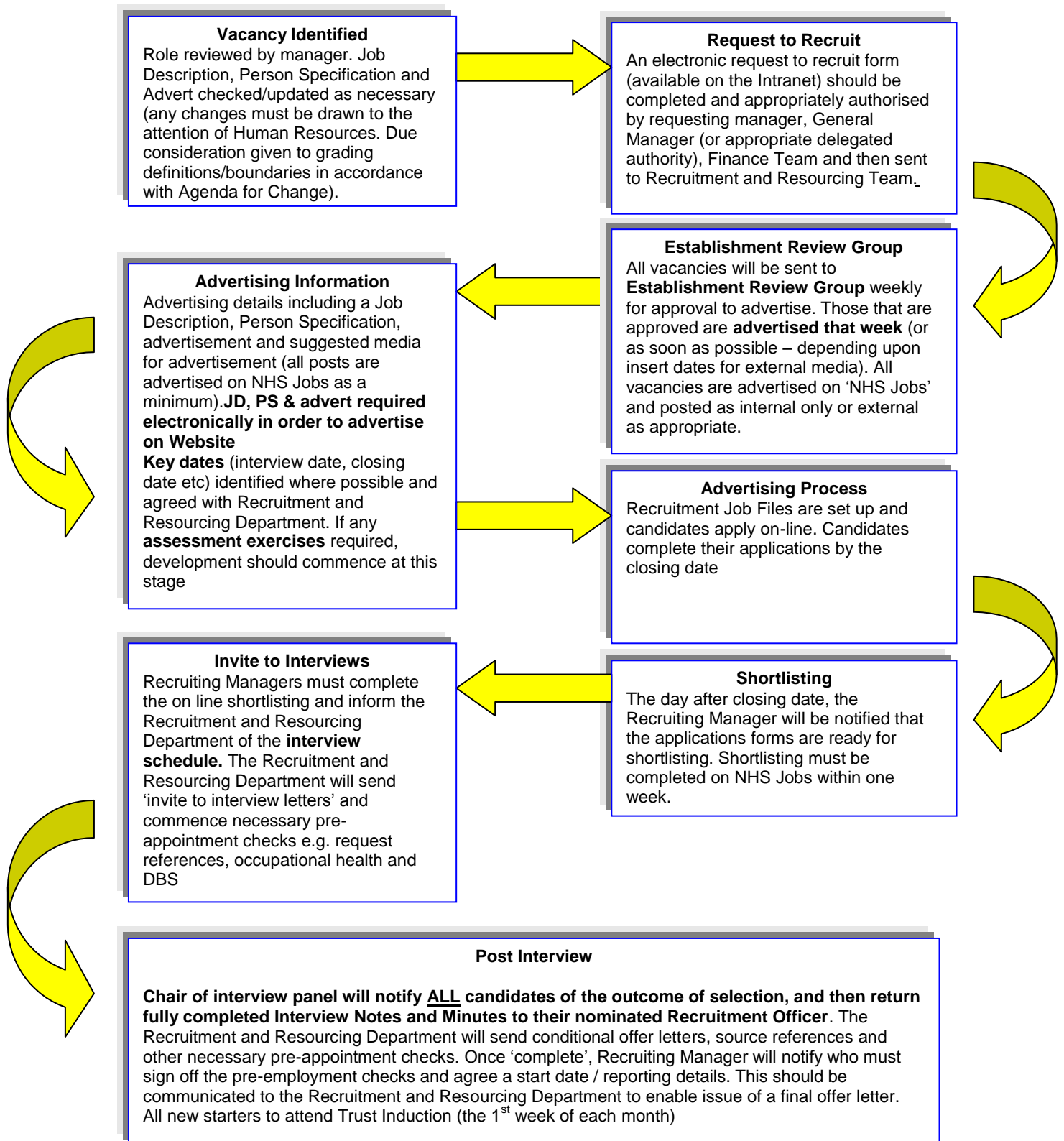
On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to contractual sick pay, where there has been a break or breaks in service of 12 months or less

24. REVIEW OF POLICY

24.1 It is the responsibility of the Recruitment and Resourcing Business Partner to review and monitor the progress of this policy in light of changes in legislation or recommended practice.

25. APPENDIX 1

THE RECRUITMENT AND SELECTION PROCESS – AT A GLANCE



26. Appendix 2

Fit and Proper Persons Assurance Framework

Standard	Assurance	Evidence
<p>Providers should make every effort to ensure that all available information is sought to confirm that the individual is of good character as defined in Schedule 4, Part 2 of the regulations.</p> <p><i>(Sch.4, Part 2: Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence. Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.)</i></p>	<p>Employment checks are undertaken in accordance with NHS Employers pre-employment check standards and include:</p> <ul style="list-style-type: none"> ▪ Two references, one of which must be most recent employer ▪ qualification and professional registration checks ▪ right to work checks ▪ identity checks ▪ occupational health clearance ▪ DBS checks (where appropriate) <p>In addition, we also carry out:</p> <ul style="list-style-type: none"> ▪ Declarations of fitness by candidates (Appendix 3) ▪ Search of insolvency and bankruptcy register (*) ▪ Search of disqualified directors register (*) 	<p>References Other pre-employment checks DBS checks where appropriate Signed declarations from applicants Register search results</p>
<p>If a provider discovers information that suggests an individual is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</p>	<p>Disciplinary policy and procedure provides for such investigations.</p> <p>Revised contracts allow for termination in the event of non-compliance with regulations and other requirements.</p>	<p>Contracts of employment (for EDs and director-equivalents) Terms and conditions of service agreements (for NEDs) Disciplinary policy and procedure</p>

Standard	Assurance	Evidence
<p>Where a provider deems the individual suitable despite not meeting the characteristics outlined in Schedule 4, Part 2 of these regulations, the reasons should be recorded and information about the decision should be made available to those that need to be aware.</p>	<p>This would be the subject of debate at the Remuneration & Nomination Committee (for EDs and director-equivalents) and at the council of governors (for NEDs). The minutes would record such decisions.</p> <p>The Chair would take advice from internal and external advisors as appropriate.</p>	<p>Minutes of meetings.</p>
<p>Where specific qualifications are deemed by the provider as necessary for a role, the provider must make this clear and should only employ those individuals that meet the required specification, including any requirements to be registered with a professional regulator.</p>	<p>This requirement is included within the job description for relevant posts and is checked as part of the pre-employment checks.</p>	<p>Person specification Recruitment policy and procedure</p>
<p>The provider should have appropriate processes for assessing and checking that the individual holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leaderships skills and a caring and compassionate nature), to undertake the role; these should be followed in all cases and relevant records kept.</p>	<p>Employment checks include a candidate's qualifications and employment references.</p> <p>The recruitment process also includes qualitative assessment and values-based questions.</p>	<p>Recruitment policy and procedure Values-based questions</p>

Standard	Assurance	Evidence
<p>The provider may consider that an individual can be appointed to a role based on their qualifications, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timeframe.</p>	<p>Any such decision would be discussed by the Remuneration & Nomination Committee or council of governors and would be minuted. Actions would be subject to follow-up as part of ongoing review and appraisal.</p>	<p>NED appraisal framework NED competence framework ED appraisals</p>
<p>When appointing relevant individuals the provider has processes for considering a person's physical and mental health in line with the requirements of the role.</p>	<p>All post-holders are subject to clearance by occupational health as part of the pre-employment process.</p>	<p>Occupational health clearance</p>
<p>Wherever possible, reasonable adjustments are made in order that an individual can carry out the role.</p>	<p>This is already included in the Trust's Reasonable Adjustments Policy.</p>	<p>Reasonable Adjustments Policy</p>

Standard	Assurance	Evidence
<p>The provider has processes in place to assure itself that the individual has not been at any time responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p> <p><i>“Responsible for, contributed to or facilitated” means that there is evidence that a person has intentionally or through neglect behaved in a manner which would be considered to be or would have led to serious misconduct or mismanagement.</i></p> <p><i>“Privy to” means that there is evidence that a person was aware of serious misconduct or mismanagement but did not take the appropriate action to ensure it was addressed.</i></p> <p><i>“Serious misconduct or mismanagement” means behaviour that would constitute a breach of any legislation/enactment CQC deems relevant to meeting these regulations or their component parts.”)</i></p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It is also incorporated into a revised reference request template for all director and director-equivalent posts.</p>	<p>NED Recruitment Information pack</p> <p>Pre-employment declaration</p> <p>Reference Request for ED/NED</p>

Standard	Assurance	Evidence
<p>The provider must not appoint any individual who has been responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It is also incorporated into a revised reference request template for all director and director-equivalent posts.</p>	<p>NED Recruitment Information pack Reference Request for ED/NED</p>
<p>Only individuals who will be acting in a role that falls within the definition of a “regulated activity” as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS).</p> <p><i>(CQC recognises that it may not always be possible for providers to access a DBS check as an individual may not be eligible.)</i></p>	<p>DBS checks are undertaken only for those posts which fall within the definition of a “regulated activity” or which are otherwise eligible for such a check to be undertaken.</p>	<p>DBS policy DBS checks for eligible post-holders</p>
<p>As part of the recruitment/appointment process, providers should establish whether the individual is on a relevant barring list.</p>	<p>Eligibility for DBS checks will be assessed for each vacancy arising.</p>	<p>DBS policy</p>
<p>The fitness of directors is regularly reviewed by the provider to ensure that they remain fit for the role they are in; the provider should determine how often fitness must be reviewed based on the assessed risk to business delivery and/or the service users posed by the individual and/or role.</p>	<p>Post-holders undertake annual declarations of fitness to continue in post (Appendix B)</p> <p>Checks of insolvency and bankruptcy register and register of disqualified directors to be undertaken each year as part of the appraisal process. (*)</p>	<p>Annual declaration NED appraisal process ED appraisal process</p>

Standard	Assurance	Evidence
The provider has arrangements in place to respond to concerns about a person's fitness after they are appointed to a role, identified by itself or others, and these are adhered to.	The disciplinary policy provides these arrangements, and revised contracts (for EDs and director-equivalents) and agreements (for NEDs) incorporate maintenance of fitness as a contractual requirement.	Disciplinary policy ED contracts of employment NED agreements
The provider investigates, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, proportionate, timely action is taken; the provider must demonstrate due diligence in all actions.	This will be undertaken if concerns are identified and revised contracts provide for termination if individuals fail to meet necessary standards.	Revised employment contracts for ED and NEDs
Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to service users.	This would be reviewed when concerns are identified.	Disciplinary policy.
The provider informs others as appropriate about concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and supports any related enquiries/investigations carried out by others.	This would be completed if any concerns were identified.	Referrals made to other agencies.

Component

() indicates newly-introduced requirements to address the regulations*

In the table above, unless the contrary is stated or the context otherwise requires, "ED" means executive directors and director-equivalents.

27. Appendix 3

Pre-employment and annual declaration for director and director-equivalent posts

LUTON AND DUNSTABLE UNIVERSITY HOSPITAL NHS FOUNDATION TRUST (“the Trust”)

“FIT AND PROPER PERSON” DECLARATION

1. It is a condition of employment that those holding director and director-equivalent posts provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts. Your post has been designated as being such a post. Fitness to hold such a post is determined in a number of ways, including (but not exclusively) by the Trust’s provider licence, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2008 (“the Regulated Activities Regulations”) and the Trust’s constitution.
2. By signing the declaration below, you are confirming that you do not fall within the definition of an “unfit person” or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.

Provider licence

3. Condition G4(2) of Luton & Dunstable University Hospital NHS Foundation Trust’s Provider Licence (“the Licence”) provides that the Licensee shall not appoint as a director any person who is an unfit person, except with the approval in writing of Monitor.
4. Licence Condition G4(3) requires the Licensee to ensure that its contracts of service with its directors contain a provision permitting summary termination in the event of a director being or becoming an unfit person. The Licence also requires the Licensee to enforce that provision promptly upon discovering any director to be an unfit person, except with the approval in writing of Monitor.
5. An “unfit person” is defined at condition G4(5) of the Licence as:
 - (a) an individual:
 - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
 - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
 - (iii) who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or

- (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or
- (b) a body corporate, or a body corporate with a parent body corporate:
 - (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub-paragraph (a) of this paragraph, or
 - (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
 - (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
 - (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
 - (v) which passes any resolution for winding up, or
 - (vi) which becomes subject to an order of a Court for winding up.

Regulated Activities Regulations

6. Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a director, or performing the functions of or equivalent or similar to the functions of, such a director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation.
7. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:
 - (a) the individual is of good character;
 - (b) the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed;
 - (c) the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed;
 - (d) the individual has not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
 - (e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.
8. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- (a) the person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
- (b) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
- (c) the person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- (d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- (e) the person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- (f) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

Trust's constitution

9. The Trust's constitution places a number of restrictions on an individual's ability to become or continue as a director. A person may not become or continue as a director of the Trust if:
- (a) they are a member of the council of governors, or a governor or director of an NHS body or another NHS foundation trust;
 - (b) they are a member of the patients' forum of an NHS organisation;
 - (c) they are the spouse, partner, parent or child of a member of the board of directors of the Trust;
 - (d) they are a member of a local authority's scrutiny committee covering health matters;
 - (e) they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - (f) they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
 - (g) they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
 - (h) they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - (i) in the case of a non-executive director, they are no longer a member of the public constituency;
 - (j) they are a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not

28. Appendix 4

Specimen Chief Executive contract

CONTRACT OF EMPLOYMENT

between

XXXX

- and -

LUTON AND DUNSTABLE UNIVERSITY HOSPITAL NHS FOUNDATION TRUST

This deed is dated of 20

1. INTERPRETATION

1.1 Within this contract, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- | | |
|---|--|
| “The 2006 Act” | means the National Health Service Act 2006; |
| “The Remuneration & Nomination Committee” | means the appointments, remuneration and terms of employment committee established by the Board and for the avoidance of doubt this is the committee referred to in sch.7, para.18(2) of the 2006 Act; |
| “The Board” | means the board of directors of the Trust, as referred to in sch.7, para.15(1) of the 2006 Act, constituted in accordance with the Trust’s constitution; |
| “The Council of Governors” | means the council of governors of the Trust, as referred to in sch.7, para.7 of the 2006 Act, constituted in accordance with the Trust’s constitution |
| “The Chair” | means the person appointed by the council of governors under sch.7, para.17(1) of the 2006 Act to be the Chairman of the Trust; |
| “The Chief Executive” | means the person appointed by the non-executive directors under sch.7, para.17(3) of the 2006 Act to be the Chief Executive and Accounting Officer of the Trust and whose appointment is approved by the council of governors at a general meeting under sch.7, para. 17(5) of the 2006 Act; |
| “Constitution” | means the Trust’s Constitution, as amended from time to time; |
| “Contract” | means this contract; |

“The Trust”	means Luton and Dunstable University Hospital NHS Foundation Trust
“Intellectual Property Rights”	means patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Invention”	any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.
“Party”	means either the employee or the Trust and “Parties” means both of them;
“Provider Licence”	means the licence issued to the Trust by Monitor under s.87 Health and Social Care Act 2012;
“Regulated Activities Regulations”	means The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
“You”, “your” or “the Employee”	means the person named in the contract.

1.2 Headings are used for convenience only and shall not affect the construction of this Contract.

1.3 The appendices to this Contract form part of (and are incorporated into) this Contract.

1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to any document such as the Trust’s Constitution and the Trust’s policies are references to those documents as they may be amended from time to time.

2. THE CONTRACT

2.1 This Contract, together with the appendices and any collective agreements referred to within clause 5.2, constitutes the whole agreement between you and the Trust and supersedes any prior written or oral agreements, representations or understandings between the Parties. The

Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this Contract excludes liability for fraud.

- 2.2 No failure or delay by either Party in exercising any right, power or privilege under this Contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

3. CHANGES TO THIS CONTRACT

- 3.1 Any amendments to this Contract can only be made by the Remuneration & Nomination Committee following, if necessary, appropriate consultation with you.

4. POST TITLE AND DUTIES

- 4.1 Your appointment is to the post of Chief Executive of the Trust, and your appointment was approved by the Council of Governors on **XXXX** as required by sch.7, para 17(5) of the 2006 Act. The 2006 Act confirms that the Chief Executive is also the Accounting Officer of the Trust and it is a condition of your employment that you sign on appointment and abide by the NHS Foundation Trust Accounting Officer Memorandum (Monitor, 2014, and any later version of such memorandum) during the continuance of your employment.
- 4.2 You shall perform such statutory and other duties and exercise such powers in relation to the Trust as set out in the job specification previously provided to you and as the Trust or the Board may from time to time require. You shall serve the Trust to the best of your ability and use your best endeavours to promote the interests and welfare of the Trust.
- 4.3 You shall accept such administrative requirements and guidelines as the Board shall make from time to time regarding the administration of this Contract and in particular the method of payment of remuneration and the implementation of the Trust's disciplinary and grievance procedures.
- 4.4 You shall report directly to the Chair.
- 4.5 The Trust reserves the right to suspend you with pay from the performance of your duties and/or exclude you from all or any premises of the Trust.

5. TERMS AND CONDITIONS OF SERVICE

- 5.1 Your terms and conditions of service are in accordance with Agenda for Change NHS Terms and Conditions, together with appendix 1.
- 5.2 Terms and conditions of service applicable to this post are those contained within the NHS Terms and Conditions of Service Handbook. Any exceptions or variations, as determined by the Remuneration & Nomination committee, are contained in the appendix 1 to this Contract. Your employment is not subject to any other collective agreements.
- 5.3 It is a condition of your employment that you abide by:

- 5.3.1 the Trust's Constitution, as amended from time to time;
- 5.3.2 the Trust's Code of Conduct for Directors, Governors and Employees, as amended from time to time;
- 5.3.3 the Trust's Standing Orders, Standing Financial Instructions and Scheme of Delegation, as amended from time to time;
- 5.3.4 the Trust's Provider Licence, as amended from time to time; and
- 5.3.5 the policies and procedures that are adopted by the Trust, as amended from time to time, including the Trust's Disciplinary and Grievance Procedures and the Trust's Code of Business Conduct.

It is your responsibility to familiarise yourself with these documents and to keep abreast of any amendments. Copies are available on request from the Trust's Human Resources department.

- 5.4 You shall abide by the Trust's Code of Business Conduct, as amended from time to time including the provisions relating to the acceptance of gifts and hospitality.
- 5.5 It is a condition of your employment that you agree to the public disclosure of information by the Trust in relation to your employment in accordance with the 2006 Act, the NHS Foundation Trust Annual Reporting Manual (Monitor, 2014, and any later version of such guidance) and/or any other legal or regulatory requirements that may be imposed on the Trust from time to time.
- 5.6 You are required to confirm in writing in such form as may be prescribed by the Trust, on appointment and thereafter on demand, that:
 - 5.6.1 you are not subject to any restrictions which would prevent you from holding the office of director of the Trust;
 - 5.6.2 you do not fall within the definition of an "unfit person" as specified in the Trust's Provider Licence;
 - 5.6.3 you satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations; and
 - 5.6.4 you do not meet any of the criteria for disqualification as a director outlined within the Trust's constitution.
- 5.7 You shall notify the Trust as soon as practicable (and in any event within 7 days) of any change in circumstances that means the written confirmation that you have provided in accordance with clause 5.6 above is no longer accurate.
- 5.8 You warrant that you are entitled to work in the United Kingdom without any additional approvals and you will notify the Trust immediately if you cease to be so entitled during your employment.

- 5.9 Failure to provide the confirmation or notification described in clauses 5.6 to 5.8 (inclusive) above without good reason within 14 days of such confirmation or notification being demanded or required shall be referred to the Remuneration & Nomination committee and is likely to be considered a disciplinary matter.

6. LOCATION

- 6.1 The nature of this post will require you to work for, and on the sites of, the Trust. You shall have a main base to be used as appropriate to discharge the duties of your post and you may establish such other base as agreed from time to time with the Chair. This is subject to change at the discretion of the Chair. You will not be required to work outside the UK for more than one month per year during your employment.

7. APPOINTMENT AND NOTICE

- 7.1 Your appointment commenced on **XXXX** and, subject to the remaining terms of this Contract, shall continue until terminated by not less than 6 months' notice in writing from the Trust to you, or 6 months' notice in writing from you to the Chair. Your resignation shall be effective from the date specified in the notice or, where no date is specified, from the date on which the notice is given.
- 7.2 Nothing in these terms and conditions of employment shall prevent the Remuneration & Nomination committee from terminating your employment by summary dismissal when such termination is justified by reference to the Trust's disciplinary procedures at the date of such termination and, in the case of such summary dismissal, the Trust shall be under no obligation to make the payment of compensation referred to in clause 7.1 above.

8. TERMINATION

- 8.1 Without prejudice to the provisions of the Trust's disciplinary procedure, your appointment may be subject to summary termination by the Remuneration & Nomination committee if:
- 8.1.1 you commit any act of gross misconduct; or
 - 8.1.2 you no longer satisfy the criteria to be considered a fit and proper person under the terms of the Trust's Provider Licence or the Regulated Activities Regulations; or
 - 8.1.3 you meet any of the criteria for disqualification as a director outlined within the Trust's Constitution.
- 8.2 Upon termination of this contract, you agree to:
- 8.2.1 immediately deliver to the Trust all Trust property which is in your possession or under your control;
 - 8.2.2 irretrievably delete any information relating to the business of the Trust stored on any magnetic or optical disk or memory card and all matter derived from such sources which is in your possession or under your control outside of the Trust's premises; and

8.2.3 if requested, provide a signed statement that you have complied with the obligations under this clause together with such evidence of compliance as the Trust may reasonably request.

9. SALARY AND EXPENSES

9.1 You shall receive during the continuance of your appointment a salary at a rate of **XXXX** per annum.

9.2 Your salary may be reviewed annually by the Remuneration & Nomination committee, with any revisions to salary effective from 1 April. The Trust shall not be obliged to increase your salary in connection with any review. Any changes to your salary will be notified to you in writing.

9.3 You shall be refunded such sums to cover all reasonable out of pocket expenses incurred by yourself in connection with your employment in accordance with the Trust's policy on the payment of expenses (as may be amended from time to time). These expenses shall be approved by the Chair or in such other manner as the Trust may reasonably require and shall be subject to the production of such vouchers or other evidence of actual payment of the expenses as are required by policies or regulations of the Trust from time to time.

9.4 The Trust reserves the right to deduct from your final salary any holidays taken in excess of your entitlement up to that date and any outstanding debts and/or liabilities, e.g. lease car, etc. This is without prejudice to any deductions which may have to be made in accordance with a statutory requirement or court order.

9.5 No motor car shall be provided by the Trust but in respect of the use of your own motor car in connection with your employment, you may claim all business mileage usage expenses at the rate per mile from time to time agreed by the Trust. Alternatively, you may use the Trust's car lease scheme, which will convey a taxable benefit on you and which will be your sole responsibility.

10. OUTSIDE EMPLOYMENT AND CONFLICTS OF INTERESTS

10.1 You shall not, without the written consent of the Chair, engage in any outside employment or accept any commitments that may give rise to a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

10.2 It is acknowledged that you have declared any conflicts of interest that are apparent at present. If you become aware of any (further) actual or potential conflicts of interest, these must be disclosed in accordance with the requirements of the Trust's Constitution. Failure to disclose such interest will be considered by the Trust to be gross misconduct.

11. CONTINUOUS EMPLOYMENT

11.1 Your date of continuous NHS service is calculated in accordance with section 12 of the NHS Terms and Conditions of Service Handbook and is **XXXX**.

12. HOURS OF WORK

- 12.1 You are required to work such hours as are necessary to discharge the duties of your post. By accepting this appointment, you confirm that, taking into account any other commitments, you are able to allocate sufficient time to the Trust to discharge your responsibilities effectively.
- 12.2 The Working Time Regulations 1998 limit working time to an average of 48 hours per week (over a 17 week reference period). The nature of this post may require you on occasions to work in excess of the weekly average. If it is anticipated that you will be working in excess of this limit over the entire reference period and you consent to do so, you must sign a declaration to the effect available from the Human Resources directorate. You may subsequently withdraw from this declaration at any time by giving one month's notice in writing.

13. ANNUAL LEAVE

- 13.1 As agreed by the Remuneration & Nomination committee, your annual leave entitlement is 33 days. Your annual leave entitlement for the current leave year will be calculated pro-rata from your date of commencement. In addition, you are entitled to 8 Bank Holidays which, in normal circumstances, will be taken as they fall.
- 13.2 The dates of annual leave shall be agreed in advance with the Chair. The leave year will commence on 1 April each year.
- 13.3 Leave may not be carried forward from one leave year to the next without the prior permission of the Chair.
- 13.4 On termination of this contract, annual leave shall be calculated pro rata and any outstanding holiday pay shall be paid in lieu to you.

14. SICK LEAVE

- 14.1 Your entitlement to occupational sick pay is determined by national agreement and is contained in the NHS Terms and Conditions of Service Handbook.
- 14.2 The entitlement is subject to:
- 14.2.1 notification of absence because of sickness being made immediately to the Trust in accordance with its determined procedure, details of which can be obtained from the Human Resources directorate.
 - 14.2.2 a self-certificate being provided if the absence continues after the third calendar day. The certificates are available from the Human Resources directorate and must be completed and forwarded immediately to the Trust in accordance with its procedures.

- 14.2.3 production of a medical certificate (a “fit note”) for absences beyond seven calendar days, and the production of such further certificates as may be necessary.
- 14.2.4 an examination by a medical practitioner nominated by the Trust, if the Trust so require.

15. SPECIAL LEAVE

- 15.1 Special leave for official or domestic purposes will be granted at the discretion of the Chair within policies and procedures agreed by the Trust.

16. PENSION STATEMENTS

- 16.1 Membership of the NHS Pension Scheme is optional to all employees aged between 16 and 70 years. You will be automatically enrolled into the scheme unless you opt out. The scheme is contracted out of the earnings related part of the State Pension Scheme. Details of the NHS Pension Scheme are given in the scheme guide, which will be provided to you on commencement of employment.

17. CONFIDENTIALITY

- 17.1 You agree that at all times both during and after the termination of your employment for whatever reason:
 - 17.1.1 all matters relating to any patient’s diagnosis and treatment which come to your attention will be kept strictly confidential and under no circumstances will such information be divulged or passed on by yourself to any unauthorised person(s);
 - 17.1.2 you will keep secret and not use (except to the extent that disclosure and/or use is expressly authorised by the Trust and/or is required for the proper performance of your responsibilities under this Contract) any information belonging to the Trust which is of a secret or confidential nature and/or of value to the Trust.
- 17.2 Examples of information that the Trust regards as confidential includes, but is not limited to:
 - 17.2.1 information about the Trust’s future plans (including proposals under consideration), which have not been published;
 - 17.2.2 copies of minutes of, and reports presented to, meetings which are not held in public;
 - 17.2.3 information about the Trust’s financial affairs (including costings, budgets, turnover and other financial information);
 - 17.2.4 information about the Trust’s commercial models or market share;
 - 17.2.5 any documents relating to capital investments or tender processes involving the Trust.

- 17.3 For the avoidance of doubt, the obligation referred to in clause 17.1 above applies whether or not the information is marked as confidential.
- 17.4 The obligation of confidentiality contained in clause 17.1 does not apply to:
- 17.4.1 any use or disclosure required by law;
 - 17.4.2 any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure; or
 - 17.4.3 any information which is provided to you without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure.
- 17.5 The agreement referred to in clause 17.1 above does not remove your right to refer to the Trust's Raising Concerns in the Workplace Policy which enables you to raise concerns about malpractice at an early stage and in the right way where you consider the interests of others or the organisation is at risk ("whistleblowing").

18. INFORMATION GOVERNANCE

- 18.1 In the course of your duties you are required to observe and follow the requirements set out by information governance rules, policies, standards and procedures. You must ensure you are aware of the handling requirements, take personal responsibility for the quality of data recorded, protect information at all times and that you do not attempt to breach information security in any way. Further information can be obtained from the Trust's Information Governance department, Senior Information Risk Owner or Caldicott Guardian.

19. DATA PROTECTION

- 19.1 In discharging your responsibilities under this appointment you may be required to hold, disclose, use or otherwise process personal data (having the meaning given to it under the Data Protection Act 1998). You shall ensure that all personal data is held, disclosed, used or otherwise processed only under instructions from the Trust for lawful purposes and in accordance with the Data Protection Act 1998.
- 19.2 You consent to the Trust processing data relating to you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998) relating to you including, as appropriate:
- 19.2.1 information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to work;
 - 19.2.2 your racial or ethnic origin or religious or similar information in order to monitor compliance with equal opportunities legislation;
 - 19.2.3 in order to comply with legal requirements and obligations to third parties.

20. GRIEVANCE AND DISCIPLINARY PROCEDURE

20.1 All disciplinary action shall be taken and implemented in accordance with the Trust's Disciplinary Policy, as amended from time to time, so far as applicable to you. Copies of the Trust's Disciplinary Policy may be obtained from the Human Resources directorate. Any grievance should be referred to the Chair and, if not resolved, then to the senior independent director.

21. PROFESSIONAL QUALIFICATIONS

21.1 Your employment is subject to the maintenance of registration as appropriate to your post (and as detailed in the job description previously provided to you) and the Trust reserves the right to inspect on demand any certificate of qualification claimed and evidence of current membership of any relevant professional register.

22. USE OF IT EQUIPMENT

22.1 The Trust may monitor the use of its IT equipment and systems, including internet usage and websites visited. The Trust reserves the right to monitor the content of e-mails to ensure compliance with its policies.

22.2 You shall comply with any acceptable use policy that the Trust may publish from time to time. You shall report any unacceptable use of the Trust's IT systems to the Chair immediately.

23. GENERAL

23.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

23.2 The validity, construction and performance of this Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

23.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

23.4 Provided you act honestly and in good faith, you will not have to meet out of your personal resources any personal civil liability which is incurred in the execution or purported execution of your functions, unless you have acted recklessly. Any costs arising in this way will be met by the Trust.

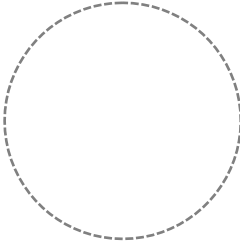
23.5 You shall give the Trust full written details of all Inventions and of all works embodying Intellectual Property Rights made wholly or partially by you at any time during the course of your employment. You acknowledge that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions and works shall automatically, on creation, vest in the Trust absolutely. To the extent that they do not vest automatically, you agree to

hold them on trust for the Trust. You agree promptly to execute all documents and do all acts as may, in the opinion of the Trust, be necessary to give effect to this clause 23.5

- 23.6 By signing this contract, you irrevocably waive all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which you have or will have in any existing or future works referred to in clause 23.5, and all similar rights relating to any copyright which forms part of the Intellectual Property Rights and you agree not to support, maintain or permit any claim for infringement of moral rights such as copyright works.
- 23.7 You irrevocably appoint the Trust to be your attorney in your name and on your behalf to execute documents, use your name and do all things which are necessary or desirable for the Trust to obtain for itself or its nominee the full benefit of clauses 23.5 and 23.6. A certificate in writing, signed by any director of the Trust, that any instrument or act falls within the authority conferred by this Contract shall be conclusive evidence that such is the case so far as any third party is concerned.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by Luton & Dunstable University Hospital NHS Foundation Trust by affixing its common seal in the presence of:



Signed (Authorised Officer)

Name

Position

Signed (Authorised Officer)

Name

Position

Signed as a deed by **XXXX** in the presence of:

Signed

Signature of witness

Name and address of witness

APPENDIX 1:
TERMS AND CONDITIONS OF SERVICE

A1. This post is in accordance and principles as set within Agenda for Change NHS Terms and Conditions with the exception of:

- Pay
- Notice Periods

29. Appendix 5

Specimen executive director contract of employment

CONTRACT OF EMPLOYMENT

between

XXXX

- and -

LUTON AND DUNSTABLE UNIVERSITY HOSPITAL NHS FOUNDATION TRUST

This deed is dated of 20

1. INTERPRETATION

1.1 Within this contract, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“The 2006 Act” means the National Health Service Act 2006;

“The Remuneration & Nomination committee” means the appointments, remuneration and terms of employment committee established by the Board and for the avoidance of doubt this is the committee referred to in sch.7, para.18(2) of the 2006 Act;

“The Board” means the board of directors of the Trust, as referred to in sch.7, para.15(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;

“The Chair” means the person appointed by the council of governors under sch.7, para.17(1) of the 2006 Act to be the Chairman of the Trust;

“The Chief Executive” means the person appointed by the non-executive directors under sch.7, para.17(3) of the 2006 Act to be the Chief Executive and Accounting Officer of the Trust and whose appointment is approved by the council of governors at a general meeting under sch.7, para. 17(5) of the 2006 Act;

“Constitution” means the Trust’s Constitution, as amended from time to time;

“Contract” means this contract;

“The Trust”	means Luton & Dunstable University Hospital NHS Foundation Trust;
“Intellectual Property Rights”	means patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Invention”	any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.
“Party”	means either the employee or the Trust and “Parties” means both of them;
“Provider Licence”	means the licence issued to the Trust by Monitor under s.87 Health and Social Care Act 2012;
“Regulated Activities Regulations”	means The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
“You”, “your” or “the Employee”	means the person named in the contract.

1.2 Headings are used for convenience only and shall not affect the construction of this Contract.

1.3 The appendices to this Contract form part of (and are incorporated into) this Contract.

1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to any document such as the Trust’s Constitution and the Trust’s policies are references to those documents as they may be amended from time to time.

2. THE CONTRACT

2.1 This Contract, together with the appendices and any collective agreements referred to within clause 5.2, constitutes the whole agreement between you and the Trust and supersedes any prior written or oral agreements, representations or understandings between the Parties. The

Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this Contract excludes liability for fraud.

- 2.2 No failure or delay by either Party in exercising any right, power or privilege under this Contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

3. CHANGES TO THIS CONTRACT

- 3.1 Any amendments to this Contract can only be made by the Remuneration & Nomination committee following, if necessary, appropriate consultation with you.

4. POST TITLE AND DUTIES

- 4.1 Your appointment is to the post of Executive Director of the Trust, which is an executive director position with full voting rights as a member of the Board.
- 4.2 You shall perform such statutory and other duties and exercise such powers in relation to the Trust as set out in the job specification previously provided to you and as the Trust or the Board may from time to time require. You shall serve the Trust to the best of your ability and use your best endeavours to promote the interests and welfare of the Trust.
- 4.3 You shall accept such administrative requirements and guidelines as the Board shall make from time to time regarding the administration of this Contract and in particular the method of payment of remuneration and the implementation of the Trust's disciplinary and grievance procedures.
- 4.4 You shall report directly to the Chief Executive.
- 4.5 The Trust reserves the right to suspend you with pay from the performance of your duties and/or exclude you from all or any premises of the Trust.

5. TERMS AND CONDITIONS OF SERVICE

- 5.1 Your terms and conditions of service are in accordance with Agenda for Change NHS Terms and Conditions, together with appendix 1.
- 5.2. Terms and conditions of service applicable to this post are those contained within the NHS Terms and Conditions of Service Handbook. Any exceptions or variations, as determined by the Remuneration & Nomination committee, are contained in the appendix 1 to this Contract. Your employment is not subject to any other collective agreements.
- 5.3 It is a condition of your employment that you abide by:
- 5.3.1 the Trust's Constitution, as amended from time to time;

- 5.3.2 the Trust's Code of Conduct for Directors, Governors and Employees, as amended from time to time;
- 5.3.3 the Trust's Standing Orders, Standing Financial Instructions and Scheme of Delegation, as amended from time to time;
- 5.3.4 the Trust's Provider Licence, as amended from time to time; and
- 5.3.5 the policies and procedures that are adopted by the Trust, as amended from time to time, including the Trust's Disciplinary and Grievance Procedures and the Trust's Code of Business Conduct.

It is your responsibility to familiarise yourself with these documents and to keep abreast of any amendments. Copies are available on request from the Trust's Human Resources department.

- 5.4 You shall abide by the Trust's Code of Business Conduct, as amended from time to time including the provisions relating to the acceptance of gifts and hospitality.
- 5.5 It is a condition of your employment that you agree to the public disclosure of information by the Trust in relation to your employment in accordance with the 2006 Act, the NHS Foundation Trust Annual Reporting Manual (Monitor, 2014, and any later version of such guidance) and/or any other legal or regulatory requirements that may be imposed on the Trust from time to time.
- 5.6 You are required to confirm in writing in such form as may be prescribed by the Trust, on appointment and thereafter on demand, that:
 - 5.6.1 you are not subject to any restrictions which would prevent you from holding the office of director of the Trust;
 - 5.6.2 you do not fall within the definition of an "unfit person" as specified in the Trust's Provider Licence;
 - 5.6.3 you satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations; and
 - 5.6.4 you do not meet any of the criteria for disqualification as a director outlined within the Trust's constitution.
- 5.7 You shall notify the Trust as soon as practicable (and in any event within 7 days) of any change in circumstances that means the written confirmation that you have provided in accordance with clause 5.6 above is no longer accurate.
- 5.8 You warrant that you are entitled to work in the United Kingdom without any additional approvals and you will notify the Trust immediately if you cease to be so entitled during your employment.

- 5.9 Failure to provide the confirmation or notification described in clauses 5.6 to 5.8 (inclusive) above without good reason within 14 days of such confirmation or notification being demanded or required shall be referred to the Remuneration & Nomination committee and is likely to be considered a disciplinary matter.

6. LOCATION

- 6.1 The nature of this post will require you to work for, and on the sites of, the Trust. You shall have a main base to be used as appropriate to discharge the duties of your post and you may establish such other base as agreed from time to time with the Chief Executive. This is subject to change at the discretion of the Chief Executive. You will not be required to work outside the UK for more than one month per year during your employment.

7. APPOINTMENT AND NOTICE

- 7.1 Your appointment commenced on **XXXX** and, subject to the remaining terms of this Contract, shall continue until terminated by not less than 6 months' notice in writing from the Trust to you, or 6 months' notice in writing from you to the Chief Executive. Your resignation shall be effective from the date specified in the notice or, where no date is specified, from the date on which the notice is given.
- 7.2 Nothing in these terms and conditions of employment shall prevent the Remuneration & Nomination committee from terminating your employment by summary dismissal when such termination is justified by reference to the Trust's disciplinary procedures at the date of such termination and, in the case of such summary dismissal, the Trust shall be under no obligation to make the payment of compensation referred to in clause 7.1 above.

8. TERMINATION

- 8.1 Without prejudice to the provisions of the Trust's disciplinary procedure, your appointment may be subject to summary termination by the Remuneration & Nomination committee if:
- 8.1.1 you commit any act of gross misconduct; or
 - 8.1.2 you no longer satisfy the criteria to be considered a fit and proper person under the terms of the Trust's Provider Licence or the Regulated Activities Regulations; or
 - 8.1.3 you meet any of the criteria for disqualification as a director outlined within the Trust's Constitution.
- 8.2 Upon termination of this contract, you agree to:
- 8.2.1 immediately deliver to the Trust all Trust property which is in your possession or under your control;
 - 8.2.2 irretrievably delete any information relating to the business of the Trust stored on any magnetic or optical disk or memory card and all matter derived from such sources which is in your possession or under your control outside of the Trust's premises; and

8.2.3 if requested, provide a signed statement that you have complied with the obligations under this clause together with such evidence of compliance as the Trust may reasonably request.

9. SALARY AND EXPENSES

9.1 You shall receive during the continuance of your appointment a salary at a rate of **XXXX** per annum.

9.2 Your salary may be reviewed annually by the Remuneration & Nomination committee, with any revisions to salary effective from 1 April. The Trust shall not be obliged to increase your salary in connection with any review. Any changes to your salary will be notified to you in writing.

9.3 You shall be refunded such sums to cover all reasonable out of pocket expenses incurred by yourself in connection with your employment in accordance with the Trust's policy on the payment of expenses (as may be amended from time to time). These expenses shall be approved by the Chief Executive or in such other manner as the Trust may reasonably require and shall be subject to the production of such vouchers or other evidence of actual payment of the expenses as are required by policies or regulations of the Trust from time to time.

9.4 The Trust reserves the right to deduct from your final salary any holidays taken in excess of your entitlement up to that date and any outstanding debts and/or liabilities, e.g. lease car, etc. This is without prejudice to any deductions which may have to be made in accordance with a statutory requirement or court order.

9.5 No motor car shall be provided by the Trust but in respect of the use of your own motor car in connection with your employment, you may claim all business mileage usage expenses at the rate per mile from time to time agreed by the Trust. Alternatively, you may use the Trust's car lease scheme, which will convey a taxable benefit on you and which will be your sole responsibility.

10. OUTSIDE EMPLOYMENT AND CONFLICTS OF INTERESTS

10.1 You shall not, without the written consent of the Chief Executive, engage in any outside employment or accept any commitments that may give rise to a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

10.2 It is acknowledged that you have declared any conflicts of interest that are apparent at present. If you become aware of any (further) actual or potential conflicts of interest, these must be disclosed in accordance with the requirements of the Trust's Constitution. Failure to disclose such interest will be considered by the Trust to be gross misconduct.

11. CONTINUOUS EMPLOYMENT

11.1 Your date of continuous NHS service is calculated in accordance with section 12 of the NHS Terms and Conditions of Service Handbook and is **XXXX**

12. HOURS OF WORK

- 12.1 You are required to work such hours as are necessary to discharge the duties of your post. By accepting this appointment, you confirm that, taking into account any other commitments, you are able to allocate sufficient time to the Trust to discharge your responsibilities effectively.
- 12.2 The Working Time Regulations 1998 limit working time to an average of 48 hours per week (over a 17 week reference period). The nature of this post may require you on occasions to work in excess of the weekly average. If it is anticipated that you will be working in excess of this limit over the entire reference period and you consent to do so, you must sign a declaration to the effect available from the Human Resources directorate. You may subsequently withdraw from this declaration at any time by giving one month's notice in writing.

13. ANNUAL LEAVE

- 13.1 As agreed by the Remuneration & Nomination committee, your annual leave entitlement is 33 days. Your annual leave entitlement for the current leave year will be calculated pro-rata from your date of commencement. In addition, you are entitled to 8 Bank Holidays which, in normal circumstances, will be taken as they fall.
- 13.2 The dates of annual leave shall be agreed in advance with the Chief Executive. The leave year will commence on 1 April each year.
- 13.3 Leave may not be carried forward from one leave year to the next without the prior permission of the Chief Executive.
- 13.4 On termination of this contract, annual leave shall be calculated pro rata and any outstanding holiday pay shall be paid in lieu to you.

14. SICK LEAVE

- 14.1 Your entitlement to occupational sick pay is determined by national agreement and is contained in the NHS Terms and Conditions of Service Handbook.
- 14.2 The entitlement is subject to:
- 14.2.1 notification of absence because of sickness being made immediately to the Trust in accordance with its determined procedure, details of which can be obtained from the Human Resources directorate.
 - 14.2.2 a self-certificate being provided if the absence continues after the third calendar day. The certificates are available from the Human Resources directorate and must be completed and forwarded immediately to the Trust in accordance with its procedures.
 - 14.2.3 production of a medical certificate (a "fit note") for absences beyond seven calendar days, and the production of such further certificates as may be necessary.

14.2.4 an examination by a medical practitioner nominated by the Trust, if the Trust so require.

15. SPECIAL LEAVE

15.1 Special leave for official or domestic purposes will be granted at the discretion of the Chief Executive within policies and procedures agreed by the Trust.

16. PENSION STATEMENTS

16.1 Membership of the NHS Pension Scheme is optional to all employees aged between 16 and 70 years. You will be automatically enrolled into the scheme unless you opt out. The scheme is contracted out of the earnings related part of the State Pension Scheme. Details of the NHS Pension Scheme are given in the scheme guide, which will be provided to you on commencement of employment.

17. CONFIDENTIALITY

17.1 You agree that at all times both during and after the termination of your employment for whatever reason:

17.1.1 all matters relating to any patient's diagnosis and treatment which come to your attention will be kept strictly confidential and under no circumstances will such information be divulged or passed on by yourself to any unauthorised person(s);

17.1.2 you will keep secret and not use (except to the extent that disclosure and/or use is expressly authorised by the Trust and/or is required for the proper performance of your responsibilities under this Contract) any information belonging to the Trust which is of a secret or confidential nature and/or of value to the Trust.

17.2 Examples of information that the Trust regards as confidential includes, but is not limited to:

17.2.1 information about the Trust's future plans (including proposals under consideration), which have not been published;

17.2.2 copies of minutes of, and reports presented to, meetings which are not held in public;

17.2.3 information about the Trust's financial affairs (including costings, budgets, turnover and other financial information);

17.2.4 information about the Trust's commercial models or market share;

17.2.5 any documents relating to capital investments or tender processes involving the Trust.

17.3 For the avoidance of doubt, the obligation referred to in clause 17.1 above applies whether or not the information is marked as confidential.

17.4 The obligation of confidentiality contained in clause 17.1 does not apply to:

- 17.4.1 any use or disclosure required by law;
 - 17.4.2 any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure; or
 - 17.4.3 any information which is provided to you without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure.
- 17.5 The agreement referred to in clause 17.1 above does not remove your right to refer to the Trust's Raising Concerns in the Workplace Policy which enables you to raise concerns about malpractice at an early stage and in the right way where you consider the interests of others or the organisation is at risk ("whistleblowing").

18. INFORMATION GOVERNANCE

- 18.1 In the course of your duties you are required to observe and follow the requirements set out by information governance rules, policies, standards and procedures. You must ensure you are aware of the handling requirements, take personal responsibility for the quality of data recorded, protect information at all times and that you do not attempt to breach information security in any way. Further information can be obtained from the Trust's Information Governance department, Senior Information Risk Owner or Caldicott Guardian.

19. DATA PROTECTION

- 19.1 In discharging your responsibilities under this appointment you may be required to hold, disclose, use or otherwise process personal data (having the meaning given to it under the Data Protection Act 1998). You shall ensure that all personal data is held, disclosed, used or otherwise processed only under instructions from the Trust for lawful purposes and in accordance with the Data Protection Act 1998.
- 19.2 You consent to the Trust processing data relating to you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998) relating to you including, as appropriate:
- 19.2.1 information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to work;
 - 19.2.2 your racial or ethnic origin or religious or similar information in order to monitor compliance with equal opportunities legislation;
 - 19.2.3 in order to comply with legal requirements and obligations to third parties.

20. GRIEVANCE AND DISCIPLINARY PROCEDURE

- 20.1 All disciplinary action shall be taken and implemented in accordance with the Trust's Disciplinary Policy, as amended from time to time, so far as applicable to you. Copies of the Trust's Disciplinary Policy may be obtained from the Human Resources directorate. Any grievance should be referred to the Chief Executive and, if not resolved, then to the Chair.

21. PROFESSIONAL QUALIFICATIONS

- 21.1 Your employment is subject to the maintenance of registration as appropriate to your post (and as detailed in the job description previously provided to you) and the Trust reserves the right to inspect on demand any certificate of qualification claimed and evidence of current membership of any relevant professional register.

22. USE OF IT EQUIPMENT

- 22.1 The Trust may monitor the use of its IT equipment and systems, including internet usage and websites visited. The Trust reserves the right to monitor the content of e-mails to ensure compliance with its policies.
- 22.2 You shall comply with any acceptable use policy that the Trust may publish from time to time. You shall report any unacceptable use of the Trust's IT systems to the Chief Executive immediately.

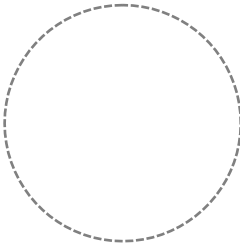
23. GENERAL

- 23.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.
- 23.2 The validity, construction and performance of this Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
- 23.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 23.4 Provided you act honestly and in good faith, you will not have to meet out of your personal resources any personal civil liability which is incurred in the execution or purported execution of your functions, unless you have acted recklessly. Any costs arising in this way will be met by the Trust.
- 23.5 You shall give the Trust full written details of all Inventions and of all works embodying Intellectual Property Rights made wholly or partially by you at any time during the course of your employment. You acknowledge that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions and works shall automatically, on creation, vest in the Trust absolutely. To the extent that they do not vest automatically, you agree to hold them on trust for the Trust. You agree promptly to execute all documents and do all acts as may, in the opinion of the Trust, be necessary to give effect to this clause 23.5

- 23.6 By signing this contract, you irrevocably waive all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which you have or will have in any existing or future works referred to in clause 23.5, and all similar rights relating to any copyright which forms part of the Intellectual Property Rights and you agree not to support, maintain or permit any claim for infringement of moral rights such as copyright works.
- 23.7 You irrevocably appoint the Trust to be your attorney in your name and on your behalf to execute documents, use your name and do all things which are necessary or desirable for the Trust to obtain for itself or its nominee the full benefit of clauses 23.5 and 23.6. A certificate in writing, signed by any director of the Trust, that any instrument or act falls within the authority conferred by this Contract shall be conclusive evidence that such is the case so far as any third party is concerned.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by Luton and Dunstable University Hospital NHS Foundation Trust by affixing its common seal in the presence of:



Signed (Authorised Officer)

Name

Position

Signed (Authorised Officer)

Name

Position

Signed as a deed by **XXXX** in the presence of:

Signed

Signature of witness

Name and address of witness

30. Appendix 6

Specimen director-equivalent contract

CONTRACT OF EMPLOYMENT

between

XXXX

- and -

LUTON AND DUNSTABLE UNIVERSITY HOSPITAL NHS FOUNDATION TRUST

This deed is dated of 20

1. INTERPRETATION

1.1 Within this contract, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“The 2006 Act”	means the National Health Service Act 2006;
“The Remuneration & Nomination committee”	means the appointments, remuneration and terms of employment committee established by the Board and for the avoidance of doubt this is the committee referred to in sch.7, para.18(2) of the 2006 Act;
“The Board”	means the board of directors of the Trust, as referred to in sch.7, para.15(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;
“The Chair”	means the person appointed by the council of governors under sch.7, para.17(1) of the 2006 Act to be the Chairman of the Trust;
“The Chief Executive”	means the person appointed by the non-executive directors under sch.7, para.17(3) of the 2006 Act to be the Chief Executive and Accounting Officer of the Trust and whose appointment is approved by the council of governors at a general meeting under sch.7, para. 17(5) of the 2006 Act;
“Constitution”	means the Trust’s Constitution, as amended from time to time;
“Contract”	means this contract;
“The Trust”	means Luton & Dunstable University Hospital NHS Foundation Trust;
“Intellectual Property	means patents, utility models, rights to Inventions, copyright and

Rights”	neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Invention”	any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.
“Party”	means either the employee or the Trust and “Parties” means both of them;
“Provider Licence”	means the licence issued to the Trust by Monitor under s.87 Health and Social Care Act 2012;
“Regulated Activities Regulations”	means The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
“You”, “your” or “the Employee”	means the person named in the contract.

1.2 Headings are used for convenience only and shall not affect the construction of this Contract.

1.3 The appendices to this Contract form part of (and are incorporated into) this Contract.

1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to any document such as the Trust’s Constitution and the Trust’s policies are references to those documents as they may be amended from time to time.

2. THE CONTRACT

2.1 This Contract, together with the appendices and any collective agreements referred to within clause 5.2, constitutes the whole agreement between you and the Trust and supersedes any prior written or oral agreements, representations or understandings between the Parties. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this Contract excludes liability for fraud.

2.2 No failure or delay by either Party in exercising any right, power or privilege under this Contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

3. CHANGES TO THIS CONTRACT

3.1 Any amendments to this Contract can only be made by the Remuneration & Nomination committee following, if necessary, appropriate consultation with you.

4. POST TITLE AND DUTIES

4.1 Your appointment is to the post of Specimen Director of the Trust. As Specimen Director you are a member of the Trust's executive team, but you are not an executive director and this post does not convey voting rights at meetings of the Board.

4.2 You shall perform such statutory and other duties and exercise such powers in relation to the Trust as set out in the job specification previously provided to you and as the Trust or the Board may from time to time require. You shall serve the Trust to the best of your ability and use your best endeavours to promote the interests and welfare of the Trust.

4.3 You shall accept such administrative requirements and guidelines as the Board shall make from time to time regarding the administration of this Contract and in particular the method of payment of remuneration and the implementation of the Trust's disciplinary and grievance procedures.

4.4 You shall report directly to the Chief Executive.

4.5 The Trust reserves the right to suspend you with pay from the performance of your duties and/or exclude you from all or any premises of the Trust.

5. TERMS AND CONDITIONS OF SERVICE

5.1 Your terms and conditions of service are in accordance with Agenda for Change NHS Terms and Conditions, together with appendix 1.

5.2. Terms and conditions of service applicable to this post are those contained within the NHS Terms and Conditions of Service Handbook. Any exceptions or variations, as determined by the Remuneration & Nomination committee, are contained in the appendix 1 to this Contract. Your employment is not subject to any other collective agreements.

5.3 It is a condition of your employment that you abide by:

5.3.1 the Trust's Constitution, as amended from time to time;

5.3.2 the Trust's Code of Conduct for Directors, Governors and Employees, as amended from time to time;

- 5.3.3 the Trust's Standing Orders, Standing Financial Instructions and Scheme of Delegation, as amended from time to time;
- 5.3.4 the Trust's Provider Licence, as amended from time to time; and
- 5.3.5 the policies and procedures that are adopted by the Trust, as amended from time to time, including the Trust's Disciplinary and Grievance Procedures and the Trust's Code of Business Conduct.

It is your responsibility to familiarise yourself with these documents and to keep abreast of any amendments. Copies are available on request from the Trust's Human Resources department.

- 5.4 You shall abide by the Trust's Code of Business Conduct, as amended from time to time including the provisions relating to the acceptance of gifts and hospitality.
- 5.5 It is a condition of your employment that you agree to the public disclosure of information by the Trust in relation to your employment in accordance with the 2006 Act, the NHS Foundation Trust Annual Reporting Manual (Monitor, 2014, and any later version of such guidance) and/or any other legal or regulatory requirements that may be imposed on the Trust from time to time.
- 5.6 You are required to confirm in writing in such form as may be prescribed by the Trust, on appointment and thereafter on demand, that:
 - 5.6.1 you are not subject to any restrictions which would prevent you from holding the office of director of the Trust;
 - 5.6.2 you do not fall within the definition of an "unfit person" as specified in the Trust's Provider Licence;
 - 5.6.3 you satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations; and
 - 5.6.4 you do not meet any of the criteria for disqualification as a director outlined within the Trust's constitution.
- 5.7 You shall notify the Trust as soon as practicable (and in any event within 7 days) of any change in circumstances that means the written confirmation that you have provided in accordance with clause 5.6 above is no longer accurate.
- 5.8 You warrant that you are entitled to work in the United Kingdom without any additional approvals and you will notify the Trust immediately if you cease to be so entitled during your employment.
- 5.9 Failure to provide the confirmation or notification described in clauses 5.6 to 5.8 (inclusive) above without good reason within 14 days of such confirmation or notification being demanded or required shall be referred to the Remuneration & Nomination committee and is likely to be considered a disciplinary matter.

6. LOCATION

- 6.1 The nature of this post will require you to work for, and on the sites of, the Trust. You shall have a main base to be used as appropriate to discharge the duties of your post and you may establish such other base as agreed from time to time with the Chief Executive. This is subject to change at the discretion of the Chief Executive. You will not be required to work outside the UK for more than one month per year during your employment.

7. APPOINTMENT AND NOTICE

- 7.1 Your appointment commenced on **XXXX** and, subject to the remaining terms of this Contract, shall continue until terminated by not less than 6 months' notice in writing from the Trust to you, or 6 months' notice in writing from you to the Chief Executive. Your resignation shall be effective from the date specified in the notice or, where no date is specified, from the date on which the notice is given.
- 7.2 Nothing in these terms and conditions of employment shall prevent the Remuneration & Nomination committee from terminating your employment by summary dismissal when such termination is justified by reference to the Trust's disciplinary procedures at the date of such termination and, in the case of such summary dismissal, the Trust shall be under no obligation to make the payment of compensation referred to in clause 7.1 above.

8. TERMINATION

- 8.1 Without prejudice to the provisions of the Trust's disciplinary procedure, your appointment may be subject to summary termination by the Remuneration & Nomination committee if:
- 8.1.1 you commit any act of gross misconduct; or
 - 8.1.2 you no longer satisfy the criteria to be considered a fit and proper person under the terms of the Trust's Provider Licence or the Regulated Activities Regulations; or
 - 8.1.3 you meet any of the criteria for disqualification as a director outlined within the Trust's Constitution.
- 8.2 Upon termination of this contract, you agree to:
- 8.2.1 immediately deliver to the Trust all Trust property which is in your possession or under your control;
 - 8.2.2 irretrievably delete any information relating to the business of the Trust stored on any magnetic or optical disk or memory card and all matter derived from such sources which is in your possession or under your control outside of the Trust's premises; and
 - 8.2.3 if requested, provide a signed statement that you have complied with the obligations under this clause together with such evidence of compliance as the Trust may reasonably request.

9. SALARY AND EXPENSES

- 9.1 You shall receive during the continuance of your appointment a salary at a rate of £XXXX per annum.
- 9.2 Your salary may be reviewed annually by the Remuneration & Nomination committee, with any revisions to salary effective from 1 April. The Trust shall not be obliged to increase your salary in connection with any review. Any changes to your salary will be notified to you in writing.
- 9.3 You shall be refunded such sums to cover all reasonable out of pocket expenses incurred by yourself in connection with your employment in accordance with the Trust's policy on the payment of expenses (as may be amended from time to time). These expenses shall be approved by the Chief Executive or in such other manner as the Trust may reasonably require and shall be subject to the production of such vouchers or other evidence of actual payment of the expenses as are required by policies or regulations of the Trust from time to time.
- 9.4 The Trust reserves the right to deduct from your final salary any holidays taken in excess of your entitlement up to that date and any outstanding debts and/or liabilities, e.g. lease car, etc. This is without prejudice to any deductions which may have to be made in accordance with a statutory requirement or court order.
- 9.5 No motor car shall be provided by the Trust but in respect of the use of your own motor car in connection with your employment, you may claim all business mileage usage expenses at the rate per mile from time to time agreed by the Trust. Alternatively, you may use the Trust's car lease scheme, which will convey a taxable benefit on you and which will be your sole responsibility.

10. OUTSIDE EMPLOYMENT AND CONFLICTS OF INTERESTS

- 10.1 You shall not, without the written consent of the Chief Executive, engage in any outside employment or accept any commitments that may give rise to a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 10.2 It is acknowledged that you have declared any conflicts of interest that are apparent at present. If you become aware of any (further) actual or potential conflicts of interest, these must be disclosed in accordance with the requirements of the Trust's Constitution. Failure to disclose such interest will be considered by the Trust to be gross misconduct.

11. CONTINUOUS EMPLOYMENT

- 11.1 Your date of continuous NHS service is calculated in accordance with section 12 of the NHS Terms and Conditions of Service Handbook and is XXXX

12. HOURS OF WORK

- 12.1 You are required to work such hours as are necessary to discharge the duties of your post. By accepting this appointment, you confirm that, taking into account any other commitments, you are able to allocate sufficient time to the Trust to discharge your responsibilities effectively.

12.2 The Working Time Regulations 1998 limit working time to an average of 48 hours per week (over a 17 week reference period). The nature of this post may require you on occasions to work in excess of the weekly average. If it is anticipated that you will be working in excess of this limit over the entire reference period and you consent to do so, you must sign a declaration to the effect available from the Human Resources directorate. You may subsequently withdraw from this declaration at any time by giving one month's notice in writing.

13. ANNUAL LEAVE

13.1 As agreed by the Remuneration & Nomination committee, your annual leave entitlement is 33 days. Your annual leave entitlement for the current leave year will be calculated pro-rata from your date of commencement. In addition, you are entitled to 8 Bank Holidays which, in normal circumstances, will be taken as they fall.

13.2 The dates of annual leave shall be agreed in advance with the Chief Executive. The leave year will commence on 1 April each year.

13.3 Leave may not be carried forward from one leave year to the next without the prior permission of the Chief Executive.

13.4 On termination of this contract, annual leave shall be calculated pro rata and any outstanding holiday pay shall be paid in lieu to you.

14. SICK LEAVE

14.1 Your entitlement to occupational sick pay is determined by national agreement and is contained in the NHS Terms and Conditions of Service Handbook.

14.2 The entitlement is subject to:

14.2.1 notification of absence because of sickness being made immediately to the Trust in accordance with its determined procedure, details of which can be obtained from the Human Resources directorate.

14.2.2 a self-certificate being provided if the absence continues after the third calendar day. The certificates are available from the Human Resources directorate and must be completed and forwarded immediately to the Trust in accordance with its procedures.

14.2.3 production of a medical certificate (a "fit note") for absences beyond seven calendar days, and the production of such further certificates as may be necessary.

14.2.4 an examination by a medical practitioner nominated by the Trust, if the Trust so require.

15. SPECIAL LEAVE

- 15.1 Special leave for official or domestic purposes will be granted at the discretion of the Chief Executive within policies and procedures agreed by the Trust.

16. PENSION STATEMENTS

- 16.1 Membership of the NHS Pension Scheme is optional to all employees aged between 16 and 70 years. You will be automatically enrolled into the scheme unless you opt out. The scheme is contracted out of the earnings related part of the State Pension Scheme. Details of the NHS Pension Scheme are given in the scheme guide, which will be provided to you on commencement of employment.

17. CONFIDENTIALITY

- 17.1 You agree that at all times both during and after the termination of your employment for whatever reason:

17.1.1 all matters relating to any patient's diagnosis and treatment which come to your attention will be kept strictly confidential and under no circumstances will such information be divulged or passed on by yourself to any unauthorised person(s);

17.1.2 you will keep secret and not use (except to the extent that disclosure and/or use is expressly authorised by the Trust and/or is required for the proper performance of your responsibilities under this Contract) any information belonging to the Trust which is of a secret or confidential nature and/or of value to the Trust.

- 17.2 Examples of information that the Trust regards as confidential includes, but is not limited to:

17.2.1 information about the Trust's future plans (including proposals under consideration), which have not been published;

17.2.2 copies of minutes of, and reports presented to, meetings which are not held in public;

17.2.3 information about the Trust's financial affairs (including costings, budgets, turnover and other financial information);

17.2.4 information about the Trust's commercial models or market share;

17.2.5 any documents relating to capital investments or tender processes involving the Trust.

- 17.3 For the avoidance of doubt, the obligation referred to in clause 17.1 above applies whether or not the information is marked as confidential.

- 17.4 The obligation of confidentiality contained in clause 17.1 does not apply to:

17.4.1 any use or disclosure required by law;

- 17.4.2 any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure; or
 - 17.4.3 any information which is provided to you without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure.
- 17.5 The agreement referred to in clause 17.1 above does not remove your right to refer to the Trust's Raising Concerns at Work Policy which enables you to raise concerns about malpractice at an early stage and in the right way where you consider the interests of others or the organisation is at risk ("whistleblowing").

18. INFORMATION GOVERNANCE

- 18.1 In the course of your duties you are required to observe and follow the requirements set out by information governance rules, policies, standards and procedures. You must ensure you are aware of the handling requirements, take personal responsibility for the quality of data recorded, protect information at all times and that you do not attempt to breach information security in any way. Further information can be obtained from the Trust's Information Governance department, Senior Information Risk Owner or Caldicott Guardian.

19. DATA PROTECTION

- 19.1 In discharging your responsibilities under this appointment you may be required to hold, disclose, use or otherwise process personal data (having the meaning given to it under the Data Protection Act 1998). You shall ensure that all personal data is held, disclosed, used or otherwise processed only under instructions from the Trust for lawful purposes and in accordance with the Data Protection Act 1998.
- 19.2 You consent to the Trust processing data relating to you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998) relating to you including, as appropriate:
- 19.2.1 information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to work;
 - 19.2.2 your racial or ethnic origin or religious or similar information in order to monitor compliance with equal opportunities legislation;
 - 19.2.3 in order to comply with legal requirements and obligations to third parties.

20. GRIEVANCE AND DISCIPLINARY PROCEDURE

- 20.1 All disciplinary action shall be taken and implemented in accordance with the Trust's Disciplinary Policy, as amended from time to time, so far as applicable to you. Copies of the Trust's Disciplinary Policy may be obtained from the Human Resources directorate. Any grievance should be referred to the Chief Executive and, if not resolved, then to the Chair.

21. PROFESSIONAL QUALIFICATIONS

- 21.1 Your employment is subject to the maintenance of registration as appropriate to your post (and as detailed in the job description previously provided to you) and the Trust reserves the right to inspect on demand any certificate of qualification claimed and evidence of current membership of any relevant professional register.

22. USE OF IT EQUIPMENT

- 22.1 The Trust may monitor the use of its IT equipment and systems, including internet usage and websites visited. The Trust reserves the right to monitor the content of e-mails to ensure compliance with its policies.
- 22.2 You shall comply with any acceptable use policy that the Trust may publish from time to time. You shall report any unacceptable use of the Trust's IT systems to the Chief Executive immediately.

23. GENERAL

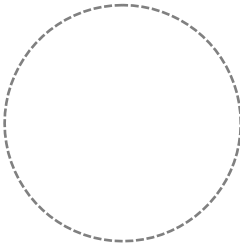
- 23.1 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.
- 23.2 The validity, construction and performance of this Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
- 23.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 23.4 Provided you act honestly and in good faith, you will not have to meet out of your personal resources any personal civil liability which is incurred in the execution or purported execution of your functions, unless you have acted recklessly. Any costs arising in this way will be met by the Trust.
- 23.5 You shall give the Trust full written details of all Inventions and of all works embodying Intellectual Property Rights made wholly or partially by you at any time during the course of your employment. You acknowledge that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions and works shall automatically, on creation, vest in the Trust absolutely. To the extent that they do not vest automatically, you agree to hold them on trust for the Trust. You agree promptly to execute all documents and do all acts as may, in the opinion of the Trust, be necessary to give effect to this clause 23.5
- 23.6 By signing this contract, you irrevocably waive all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which you have or will have in any existing or future works referred to in clause 23.5, and all similar rights relating

to any copyright which forms part of the Intellectual Property Rights and you agree not to support, maintain or permit any claim for infringement of moral rights such as copyright works.

- 23.7 You irrevocably appoint the Trust to be your attorney in your name and on your behalf to execute documents, use your name and do all things which are necessary or desirable for the Trust to obtain for itself or its nominee the full benefit of clauses 23.5 and 23.6. A certificate in writing, signed by any director of the Trust, that any instrument or act falls within the authority conferred by this Contract shall be conclusive evidence that such is the case so far as any third party is concerned.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by Luton and Dunstable University Hospital NHS Foundation Trust by affixing its common seal in the presence of:



Signed (Authorised Officer)

Name

Position

Signed (Authorised Officer)

Name

Position

Signed as a deed by **XXXX** in the presence of:

Signed

Signature of witness

Name and address of witness

APPENDIX 1:

TERMS AND CONDITIONS OF SERVICE

A1. This post is in accordance and principles as set within Agenda for Change NHS Terms and Conditions with the exception of:

- Pay
- Notice Periods

31. Appendix 7

Specimen NED terms of service agreement

TERMS AND CONDITIONS OF SERVICE

This Agreement is made the day of 20 between:

XXXX; and Luton and Dunstable University Hospital NHS Foundation Trust

1. INTERPRETATION

1.1 Within this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“The 2006 Act”	means the National Health Service Act 2006;
“The Board”	means the board of directors of the Trust, as referred to in schedule 7, paragraph 15(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;
“The Chair”	means the person appointed by the council of governors under schedule.7 paragraph 17(1) of the 2006 Act to be the Chairman of the Trust;
“The Chief Executive”	means the person appointed by the non-executive directors under schedule 7, paragraph 17(3) of the 2006 Act to be the Chief Executive and Accounting Officer of the Trust and whose appointment is approved by the council of governors at a general meeting under schedule 7, paragraph 17(5) of the 2006 Act;
“The Council of Governors”	means the council of governors of the Trust, as referred to in schedule7, paragraph 7(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;
“The Trust”	means Luton & Dunstable University Hospital NHS Foundation Trust;
“Agreement”	means this agreement;
“Constitution”	means the Trust’s constitution, as amended from time to time;
“Intellectual Property”	means patents, utility models, rights to Inventions, copyright and

Rights”	neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Invention”	any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.
“Party”	means either the employee or the Trust and “Parties” means both of them;
“Provider Licence”	means the licence issued to the Trust by Monitor under s.87 Health and Social Care Act 2012;
“Regulated Activities Regulations”	means The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
“You” or “your”	means the person named on the contract.

1.2 Headings are used for convenience only and shall not affect the construction of this Agreement.

1.3 The appendices to this Agreement form part of (and are incorporated into) this Agreement.

1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to any document such as the Trust’s Constitution and the Trust’s policies are references to those documents as they may be amended from time to time.

2. STATUTORY BASIS FOR APPOINTMENT

2.1 Non-Executive Directors hold a statutory office under the 2006 Act. Your appointment is made by the Council of Governors using its powers under schedule 7, paragraph 17(1) of the 2006 Act. This appointment does not create any contract of service or contract for services between you and the Trust.

3. EMPLOYMENT LAW

- 3.1 As an office-holder, you are neither an employee nor a worker. This appointment does not fall within the jurisdiction of Employment Tribunals, nor is there any entitlement for compensation for loss of office.

4. THIS AGREEMENT

- 4.1 This Agreement constitutes the whole agreement between you and the Trust and supersedes any prior written or oral agreements, representations or understandings between the Parties. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.
- 4.2 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 4.3 Any amendments to this Agreement can only be made by the Council of Governors following, if necessary, appropriate consultation with you.

5. POST TITLE AND REPORTING ARRANGEMENTS

- 5.1 Your appointment is to the position of Non-Executive Director, with full voting rights as a member of the Board.
- 5.2 You shall perform such statutory and other duties and exercise such powers in relation to the Trust as set out in the role description previously provided to you and as the Trust or the Board may from time to time require. You shall serve the Trust to the best of your ability and use your best endeavours to promote the interests and welfare of the Trust.
- 5.3 You shall report to the Chair. Additionally, Schedule 7, paragraph 10A of the 2006 Act places a duty on the Council of Governors to hold the non-executive directors individually and collectively to account for the performance of the Board.

6. TERM AND TERMINATION

- 6.1 This Agreement shall commence on **XXXX** and, unless terminated earlier, shall expire three years after that date.
- 6.2 You may be eligible for reappointment at the end of your term of office in accordance with the Constitution, but there is no absolute right to reappointment. Decisions on reappointments are taken by the Council of Governors on the recommendation of the Nominations Committee. The Nomination Committee's recommendation will be informed, *inter alia*, by appraisal of your performance.
- 6.3 You may terminate this Agreement at any time by giving notice in writing to the Chair. You are required to give a minimum of three months' notice. Your resignation will be effective on

the earlier of the date specified in the notice or the date three months from when the notice is given.

6.4 Your appointment may be terminated by the passing of a resolution by three-quarters of the members at a general meeting of the Council of Governors in accordance with the process set out at paragraph 12.6 of the Constitution.

6.5 Upon termination of this Agreement, howsoever caused, you agree to:

6.5.1 immediately deliver to the Trust all Trust property which is in your possession or under your control;

6.5.2 irretrievably delete any information relating to the business of the Trust stored on any magnetic or optical disk or memory card and all matter derived from such sources which is in your possession or under your control outside of the Trust's premises; and

6.5.3 if requested, provide a signed statement that you have complied with the obligations under this clause.

7. REMUNERATION AND ALLOWANCES

7.1 As a consequence of your appointment, you are entitled to be remunerated by the Trust for so long as you continue to hold office as a Non-Executive Director.

7.2 The current rate of remuneration payable to a Non-Executive Director is £XXXX per annum. The rate of remuneration will be reviewed at regular intervals by the Council of Governors, with any increases to salary effective from 1 April. The Council of Governors shall not be obliged to increase your salary in connection with any review. Any changes to remuneration will be notified to you in writing.

7.3 Additional remuneration may also be payable if you are appointed to one of the following positions:

7.3.1 Vice-Chair

7.3.2 Audit Committee Chair

7.4 You will be paid monthly in arrears on the 27th of each month, unless the 27th falls on a weekend, in which case payment will be made on the Friday before, by credit transfer into a bank or building society account of your choice. The Trust reserves the right to pay you earlier if reasonably appropriate, for example at Christmas or as a result of Bank Holidays.

7.5 Remuneration is taxable and subject to Class 1 National Insurance contributions, which will be deducted at source. Any queries relating to these arrangements should be taken up with HM Revenue and Customs. This appointment does not fall within the remit of the NHS Pension Scheme.

7.6 You shall be refunded all reasonable out of pocket expenses necessarily incurred by you on Trust business. These expenses shall be approved by the Chair or in such other manner as the Trust may reasonably require and shall be subject to the production of such vouchers, receipts or other evidence of actual payment of the expenses as are required by policies or regulations of the Trust from time to time.

7.7 On termination of your appointment, you shall only be entitled to such fees as may have accrued to the date of termination, together with reimbursement in accordance with clause 7.6 of expenses properly incurred before that date.

8. TIME COMMITMENT

8.1 You agree to devote whatever time is reasonably necessary for the proper performance of your duties and as is appropriate to the role of a Non-Executive Director. It is anticipated that this will be broadly equivalent to 4 to 5 days per month, to be worked flexibly including some evenings.

8.2 You are expected to attend all meetings of the Board, except where illness or occasional holiday commitments genuinely preclude this.

8.3 By accepting this appointment, you confirm that you are able to allocate sufficient time to meet the expectations of your role within the Trust. The written agreement of the Chair must be obtained before you accept any additional commitment that might affect the time that you are able to devote to your role as a Non-Executive Director of the Trust.

9. CONFLICT OF INTERESTS

9.1 You shall not, without the written consent of the Chair, engage in any outside employment or accept any commitments that may give rise to a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

9.2 It is acknowledged that you have declared any conflicts of interest that are apparent at present. If you become aware of any (further) actual or potential conflicts of interest, these must be disclosed in accordance with the requirements of the Trust's Constitution. Failure to disclose such interest may be considered by the Trust to be gross misconduct and/or may constitute grounds for your removal from office.

10. OTHER CONDITIONS OF APPOINTMENT

10.1 It is a condition of your appointment that you abide by:

10.1.1 the Trust's Constitution, as amended from time to time;

10.1.2 the Trust's Code of Conduct for Directors, Governors and Employees, as amended from time to time;

10.1.3 the Trust's Standing Orders, Standing Financial Instructions and Scheme of Delegation, as amended from time to time;

10.1.4 the Trust's Provider Licence, as amended from time to time; and

10.1.5 the policies and procedures that are adopted by the Trust, as amended from time to time insofar as they are applicable to your role

It is your responsibility to familiarise yourself with these documents and to keep abreast of any amendments. Copies are available on request from the Trust's Human Resources department.

10.2 It is a condition of your appointment that you agree to the public disclosure of information by the Trust in relation to your employment in accordance with the 2006 Act, the NHS Foundation Trust Annual Reporting Manual (Monitor, 2014, and any later version of such guidance) and/or any other legal or regulatory requirements that may be imposed on the Trust from time to time.

10.3 You are required to confirm in writing in such form as may be prescribed by the Trust, on appointment and thereafter on demand, that:

10.3.1 you are not subject to any restrictions which would prevent you from holding the office of director of the Trust;

10.3.2 you do not fall within the definition of an "unfit person" as specified in the Trust's Provider Licence;

10.3.3 you satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations; and

10.3.4 you do not meet any of the criteria for disqualification as a director outlined within the Trust's constitution.

10.4 Failure to provide the confirmation or notification described in clause 10.3 above and/ or clause 10.5 below without good reason within 14 days of such confirmation or notification being demanded or required (as applicable) shall be referred to the Council of Governors and is likely to be considered a disciplinary matter.

10.5 If you are disqualified from continuing as a Director on any of the grounds set out in clause 10.3 above, you shall immediately give notice in writing to the Chair. Receipt of such notice shall be taken as your resignation as Non-Executive Director.

10.6 You are required to declare immediately to the Chair in writing if you are ever arrested, have any pending prosecutions or convictions (including driving offences) or if you have accepted any police cautions. Failure to disclose this information may result in the termination of your appointment and this Agreement by the Council of Governors.

10.7 You warrant that you are entitled to work in the United Kingdom without any additional approvals and you will notify the Trust immediately if you cease to be so entitled during your appointment.

10.8 You agree that you will not make any political speeches or engage in other political activities on matters affecting the work of the Trust during the term of your appointment.

11. CONFIDENTIALITY

11.1 You agree that at all times, both during and after termination of your employment for whatever reason:

11.1.1 all matters relating to any patient's diagnosis and treatment which come to your attention will be kept strictly confidential and under no circumstances will such information be divulged or passed on by yourself to any unauthorised person(s).

11.1.2 you will keep secret and not use (except to the extent that disclosure and/or use is expressly authorised by the Trust and/or is required for the proper performance of your responsibilities under this Agreement) any information belonging to the Trust which is of a secret or confidential nature and/or of value to the Trust.

11.2 Examples of information that the Trust regards as confidential include, but are not limited to:

11.2.1 information about the Trust's future plans, including proposals under consideration, which have not been published

11.2.2 copies of minutes of, and reports presented to, meetings which are not held in public

11.2.3 information about the Trust's financial affairs (including costings, budgets, turnover and other financial information);

11.2.4 information about the Trust's commercial models or market share

11.2.5 any documents relating to capital investments or tender processes involving the Trust.

11.3 For the avoidance of doubt, the obligation referred to in clause 11.1 above applies whether or not the information is marked as confidential.

11.4 The obligation of confidentiality contained in clause 11.1 does not apply to:

11.4.1 any use or disclosure required by law;

11.4.2 any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure; or

11.4.3 any information which is provided to you without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure.

11.5 The agreement referred to in clause 11.1 above does not remove your right to refer to the Trust's Raising Concerns in the Workplace Policy which enables you to raise concerns about

malpractice at an early stage and in the right way where you consider the interests of others or the organisation is at risk (“whistleblowing”).

12. INFORMATION GOVERNANCE

- 12.1 In the course of your duties you are required to observe and follow the requirements set out by information governance rules, policies, standards and procedures. You must ensure you are aware of the handling requirements, take personal responsibility for the quality of data recorded, protect information at all times and that you do not attempt to breach information security in any way. Further information can be obtained from the Trust’s Information Governance department, Senior Information Risk Owner or Caldicott Guardian.

13. DATA PROCESSING

- 13.1 In discharging your responsibilities under this Agreement you may be required to hold, disclose, use or otherwise process personal data (having the meaning given to it under the Data Protection Act 1998). You shall ensure that all personal data is held, disclosed, used or otherwise processed only under instructions from the Trust for lawful purposes and in accordance with the Data Protection Act 1998.

- 13.2 You consent to the Trust processing data relating to you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998) relating to you including, as appropriate:

13.2.1 information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to work;

13.2.2 your racial or ethnic origin or religious or similar information in order to monitor compliance with equal opportunities legislation;

13.2.3 in order to comply with legal requirements and obligations to third parties.

14. USE OF IT EQUIPMENT

- 14.1 The Trust may monitor the use of its IT equipment and systems, including internet usage and websites visited. The Trust reserves the right to monitor the content of e-mails to ensure compliance with its policies.

- 14.2 You shall comply with any acceptable use policy that the Trust may publish from time to time. You shall report any unacceptable use of the Trust’s IT systems to the Chief Executive immediately.

15. GENERAL

- 15.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

- 15.2 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
- 15.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 15.4 Provided you act honestly and in good faith, you will not have to meet out of your personal resources any personal civil liability which is incurred in the execution or purported execution of your functions, unless you have acted recklessly. Any costs arising in this way will be met by the Trust.
- 15.5 No liability can be accepted for the loss of or damage to personal belongings on the Trust's premises. You are therefore advised to insure any belongings against all such risks.
- 15.6 In some circumstances, you may consider that you need independent professional advice in order to discharge your responsibilities as a Non-Executive Director and it may be appropriate for you to seek advice from independent advisers at the Trust's expense. The Trust Secretary is responsible for arranging access for directors to independent advice.
- 15.7 By signing this contract, you irrevocably waive all moral rights in all works embodying Intellectual Property Rights made wholly or partially by you in the provision of your services to the Trust, to which you are now or may at any future time be entitled under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions), and all similar rights relating to any copyright which forms part of the Intellectual Property Rights and you agree not to support, maintain or permit any claim for infringement of moral rights such as copyright works.

This Agreement has been entered into on the date stated at the beginning of it.

Chief Executive

For and on behalf of the Trust

Non Executive Director