

# **Standard Terms and Conditions Agreement**

## **for Placements Provided by Private, Independent and Voluntary Organisations (PIVO)**

These Terms and Conditions of service delivery apply to all PIVO Providers providing clinical teaching to MBBS students of St George's, University of London (UNIVERSITY), the Education Provider, of Cranmer Terrace, London SW17 0RE.

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Agreement, unless the context otherwise requires:
  - 1.1.1. Capitalised terms have the meanings as set out in Schedule 2 (Definitions).
  - 1.1.2. A reference to the singular includes the plural and vice versa and reference to a gender includes any gender.
  - 1.1.3. The headings in this Agreement will not affect its interpretation.

### **2. UNIVERSITY RESPONSIBILITIES**

- 2.1. To facilitate and assess the clinical teaching delivered by a PIVO Provider, the University shall:
  - 2.1.1. nominate the key contact person at the University for the PIVO Provider and inform the PIVO Provider of their identity and contact details;
  - 2.1.2. provide adequate information to the PIVO Provider's staff involved in the delivery of teaching on the specific requirements and learning outcomes for the placement including annual updates in training for the placement;
  - 2.1.3. provide education resources for PIVO Provider's staff to develop the understanding of the SGUL MBBS curriculum requirements and to achieve the competencies required to deliver teaching in their area of expertise and evaluate the progress of students;
  - 2.1.4. ensure that the occupational health and DBS clearance processes are in place to screen students on admission to the University and that no students known to be 'unfit to practise' are sent on placement;
  - 2.1.5. ensure the information submitted to the PIVO Provider in accordance with Schedule 1 of this Agreement (Data Sharing Agreement) contains no material inaccuracies;
  - 2.1.6. ensure that students have met appropriate standards of clinical knowledge and skills required to effectively engage with the specific placement undertaken and their stage in the Programme;
  - 2.1.7. collect and collate feedback from all students at the end of the placement on the quality of their experience, teaching, practice facilities and the learning opportunities made available, and then anonymise and share the results with the PIVO Provider;
  - 2.1.8. review the end of placement student feedback to identify any adverse issues raised and work with the PIVO Provider to remedy them;
  - 2.1.9. offer annual updates on the placement curricular content and learning outcomes;
  - 2.1.10. offer necessary support for the PIVO Provider's teaching staff to teach effectively.



### 3. PIVO PROVIDER'S RESPONSIBILITIES

- 3.1. To deliver the teaching commissioned by the University, the PIVO Provider shall:
  - 3.1.1. ensure that all relevant Staff are competent to support student learning for the placement, meet the relevant regulatory requirements and participate in a programme of continuing professional development in order to maintain these competencies;
  - 3.1.2. ensure that the information about the curriculum, learning outcomes, assessments and criteria for assessing students at the end of placement are communicated to all Staff involved in teaching students;
  - 3.1.3. ensure that all relevant Staff have appropriate educational responsibilities for SGUL students included in their job descriptions and appropriate competencies defined in their job specifications;
  - 3.1.4. ensure that all relevant Staff are appropriately monitored, appraised and reviewed by the PIVO Provider in relation to these responsibilities;
  - 3.1.5. inform the University if any member of the PIVO Provider's staff involved in teaching students are being investigated for any form of professional misconduct by the General Medical Council, National Health Service England, or the Nursing and Midwifery Council, or the Health Care and Professions Council, or any other relevant regulator, or have been, or are given conditions or restrictions on their practice by any of those bodies;
  - 3.1.6. inform the University if the Care Quality Commission reveals the PIVO Provider to be 'inadequate';
  - 3.1.7. inform the University if the PIVO Provider has training status withdrawn for Foundation doctors or Specialist Trainees;
  - 3.1.8. make appropriate and sufficiently qualified Staff available to ensure students receive an educationally relevant experience through effective facilitation of placements. This will allow the development and testing of the competencies required to meet the placement outcomes;
  - 3.1.9. ensure that every patient is informed of the student's presence in all consultations and respect their decision to decline the student's involvement;
  - 3.1.10. ensure that the students receive:
    - 3.1.10.1. an appropriate induction and orientation, including local policies and procedures relevant to the placement, including appropriate information about uniform policy or expected dress code, sharps policy, disposal of clinical waste, safety drills, protective clothing, infection control, panic alarms, home visiting and medical emergency policies;
    - 3.1.10.2. feedback on their performance in a time frame appropriate to the activity performed to meet the specified learning outcomes set by the University;
    - 3.1.10.3. passwords for secure access to electronic medical records and electronic radiography systems used by the PIVO Provider from the commencement of the clinical placement. The PIVO Provider must ensure that the students are aware of their responsibilities and the local security arrangements relating to this;
  - 3.1.11. immediately notify the University of any service provision changes that might affect placed students' ability to meet the learning outcomes agreed with the University and offer alternative placements, if possible;
  - 3.1.12. ensure that students have, where reasonably practical, similar work facilities and amenities to those available to PIVO Provider Staff;



- 3.1.13. ensure that all premises, facilities and equipment are suitable for the performance of the services and comply with any applicable health and safety legislation;
- 3.1.14. ensure the health, safety and welfare of students undertaking placements, as they would for Staff and provide appropriate information to students on health and safety policies as part of the induction to the placement;
- 3.1.15. ensure students are informed of the PIVO Provider mechanisms to raise a matter of concern and enable students to contact senior Staff efficiently;
- 3.1.16. work with the University to address any areas of improvement identified as part of the end of placement feedback;
- 3.1.17. notify the University of any serious untoward incidents where involvement of any student calls into question their fitness for training, or incidents which may adversely affect health or wellbeing of the student, within a timescale appropriate to the seriousness of the situation, ideally within two (2) Business Days;
- 3.1.18. the PIVO Provider shall not require any medical student to participate in any activity which has the potential to lead to any claim against the student for clinical negligence;
- 3.1.19. the PIVO Provider shall comply with MBBS quality teaching standards as advised.

#### **4. JOINT RESPONSIBILITIES**

##### **4.1. Disciplinary Procedure and Fitness to Practice**

- 4.1.1. Either Party reserves the right to remove a student from a placement in any case where a Party reasonably considers it necessary, having regard to the student's conduct or professional suitability. The decision to remove a student from a placement shall only be made by appropriate senior members of Staff (of a level of seniority to be agreed between the University and the PIVO Provider from time to time) and, wherever possible, shall only be made following consultation between the University and the PIVO Provider.
- 4.1.2. Where it is deemed necessary by the University or by the PIVO Provider (as appropriate), a student may be removed from participation in a placement to allow for the proper investigation of the conduct or professional suitability of that student. Such a disclosure will be investigated by the University, and the University will take any necessary action using a decision-making process in collaboration with the PIVO Provider.
- 4.1.3. In any event, where the University or the PIVO Provider (as appropriate) removes a student from a placement, then it shall inform the Provider or the University (as appropriate) as soon as is reasonably possible that it has taken such action, and shall make a written record of the reasons for taking such action which shall record all appropriate discussions and consultations and in particular of those discussions and consultations between relevant senior members of staff (of a level of seniority to be agreed between the University and PIVO Provider from time to time) that resulted in such action being taken.
- 4.1.4. The PIVO Provider shall co-operate with the University in relation to any disciplinary proceedings or fitness to practice proceedings taken in connection with a student.
- 4.1.5. In any case where disciplinary action is contemplated by the PIVO Provider the matter shall be referred to the University, and, wherever possible, such referral shall be made within two (2) Business Days by the PIVO Provider.



4.1.6. The conduct of any disciplinary or Fitness to Practise proceedings will be the sole responsibility of the University who shall determine the processes to be followed in accordance with its own, and Regulator policies and procedures.

## **4.2. Service User Complaints**

4.2.1. The University and the PIVO Provider shall co-operate in answering any complaints raised by Service Users in relation to student conduct.

## **4.3. Placement Planning**

4.3.1. The Parties acknowledge that the University and the PIVO Provider shall consult at least annually and in advance to agree placement capacity and identify any students attending from the University during the following academic year.

## **4.4. Indemnity**

4.4.1. The PIVO Provider and the University shall indemnify one another and keep each indemnified for placement activity at all times against any costs, claims or liabilities which may arise or are sustained by the University in consequence of any neglect, act or omission and/or breach of this Agreement by the PIVO Provider or the University (as appropriate) which results in:

4.4.1.1. any claim for, or in respect of, the death and/or personal injury of any employee or agent the University or the PIVO Provider or any student;

4.4.1.2. any claim for, in respect of, the death and/or personal injury of any third party arising out of or in the course of the Services save to the extent caused by any neglect, acts or omissions of the University or the PIVO Provider (as appropriate), breach of any express provision of this Agreement by the University or the PIVO Provider (as appropriate) or any deliberate act or omission of the University; and

4.4.1.3. any claim by a student arising out of or in the course of the delivery of the Services.

## **4.5. Termination**

4.5.1. This Agreement or part of the Agreement may be terminated immediately by agreement of the Parties where:

4.5.1.1. the placements are no longer offered by the PIVO Provider or have ceased to be required by the University; or

4.5.1.2. either the PIVO Provider or the University commits a material or persistent breach of Agreement that adversely impacts on the other party; or

4.5.1.3. a dispute is not remedied to the satisfaction of the PIVO Provider or the University within three (3) months of a notice in writing to the PIVO Provider or the University (as appropriate) requesting its/their remedy.

4.5.2. In the event of early termination in whole or in part, the PIVO Provider will be required to share such information as the University deems relevant to any successor organisation.

## **4.6. Confidential Information**

4.6.1. Confidential Information is owned by the disclosing Party and the receiving Party agrees:

4.6.1.1. to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Agreement;

4.6.1.2. not to disclose the disclosing Party's Confidential Information to any third party or to use it to the detriment of the disclosing Party; and



- 4.6.1.3. to maintain the confidentiality of the disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the disclosing Party.
- 4.6.2. The receiving Party may disclose the disclosing Party's Confidential Information:
  - 4.6.2.1. in connection with any Dispute;
  - 4.6.2.2. in connection with any litigation between the Parties;
  - 4.6.2.3. to comply with Applicable Laws and Guidance;
  - 4.6.2.4. to any appropriate Regulator;
  - 4.6.2.5. to its staff, who in respect of that Confidential Information shall be under a duty no less onerous than the receiving Party's duty under clause 4.6.2.;
  - 4.6.2.6. as permitted under any other express arrangement or other provision of this Agreement.
- 4.6.3. The obligations in clause 4.6.1. and clause 4.6.2. shall not apply to any Confidential Information which:
  - 4.6.3.1. is in or comes into the public domain other than by breach of this Agreement;
  - 4.6.3.2. the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or
  - 4.6.3.3. the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligation of confidence.
- 4.6.4. The disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 4.6.5. The receiving Party must indemnify the disclosing Party and keep the disclosing Party Indemnified against Losses and indirect losses suffered or incurred by the disclosing Party as a result of any breach of this clause 4.6.
- 4.6.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 4.6 by the receiving Party, and in addition to any right to damages the disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this clause 4.6.
- 4.6.7. This clause 4.6 shall survive the expiry or the termination of this contract for a period of 5 years.
- 4.6.8. This clause 4.6 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- 4.7. Data Protection**
- 4.7.1. Each Party agrees to comply with its obligations as set out in Schedule 1 (Data Protection) of this Agreement.
- 4.8. Freedom of Information**
- 4.8.1. Where the Disclosing Party receives a request for information that is held on behalf of the Disclosing Party by the other Party then such cooperation shall include without limitation the provision of the requested information to the Disclosing Party by the other Party within a reasonable time-scale to enable the Disclosing Party to comply with the request for information within the timescales required by FOIA and/or the EIRs.
- 4.8.2. Where the Disclosing Party receives a written request for information which is covered by FOIA and/or the EIRs and which relates to the other Party's Confidential Information the Parties shall comply with the procedure set out in clause 4.8.2:



- 4.8.2.1. the Disclosing Party shall before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving an FOIA or EIRs request notify the other Party of the receipt of such request and of the nature and extent of the information covered by the request;
- 4.8.2.2. the other Party may make representations in writing to the Disclosing Party as to whether and on what basis the Requested Information is covered by any exemption in the FOIA or EIRs and should not therefore be disclosed, including where relevant any representations as to the balance of the public interests in disclosure and non-disclosure. Such representations shall be provided to the Disclosing Party no later than five (5) working days following the notification and any representations received after this time shall not be taken into account by the Disclosing Party;
- 4.8.2.3. the Disclosing Party shall reasonably consider any representations and recommendations made by the other Party before reaching a decision on whether it must and will disclose the Requested Information. However, the Parties acknowledge that in all cases it is for the Disclosing Party (having full regard to any guidance or codes of practice issued by the Information Commissioner or by a relevant Government Department) to determine whether it is obliged to disclose the Requested Information under FOIA and EIRs including where the public interest lies in relation to disclosure;
- 4.8.2.4. the Disclosing Party shall not notify the other Party where the Disclosing Party has already decided that it does not intend to disclose the Requested Information because FOIA or EIRs does not apply to the request or an exemption under FOIA and the EIRs can be applied;
- 4.8.2.5. if the Disclosing Party takes a decision to disclose the Requested Information, it shall notify the other Party of this decision not less than 24 hours in advance of the disclosure being made; and
- 4.8.2.6. for the avoidance of doubt references to the Requested Information shall include both queries as to whether the other Party's Confidential Information exists and requests for the disclosure of the other Party's Confidential Information.
- 4.8.3. Save as set out in this clause, the terms of this contract are not confidential, but neither Party shall make any announcement that is calculated to or that does harm the reputation or legitimate interest of the other. This clause shall not prevent either Party from making comments in good faith on a matter of public interest, or from making disclosures required by FOIA, EIRs or any other legislative or regulatory requirement.

#### **4.9. Agreement duration**

- 4.9.1. This Placement Agreement shall take effect for four (4) years (the "Term") and may be automatically renewed for further Term(s) unless either Party serves written notice upon the other to terminate the Placement Agreement which notice shall be given no later than one year before the termination of the Term. For the avoidance of doubt the annual letter issues by SGUL to the provider shall be good notice that agreement will continue.

#### **4.10. Disputes**

- 4.10.1. If a dispute arises out of or in connection with this contract or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the Parties shall follow the procedure set out in this clause:
  - 4.10.1.1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the University Representative and the Provider Representative shall attempt in good faith to resolve the Dispute;





- 4.10.1.2. if the University Representative and the Provider Representative are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a senior Representative of the University and a senior director of the Provider who shall attempt in good faith to resolve it; and
- 4.10.1.3. if the senior Representative of the University and the senior director of the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation shall start not later than 30 days after the date of the ADR notice.
- 4.10.2. No Party may commence any court proceedings under clause 4.10 (Jurisdiction) (in relation to the whole or part of the Dispute until 30 Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 4.10.3. If the Dispute is not resolved within 30 Business Days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 Business Days, or the mediation terminates before the expiration of the said period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 4.10.

#### **4.11. Variation**

- 4.11.1. This Placement Agreement may be amended in whole or in part at any time by agreement of both Parties in writing.

### **5. FUNDING**

- 5.1. In consideration of the provision of the Services by the PIVO Provider the University shall pay the PIVO Provider directly according to the payment plan set out in the Letter of Coordination, subject to these Terms and Conditions.
- 5.2. The PIVO Provider acknowledges that its receipt of the Funding is conditional on its compliance with the terms and conditions of this Agreement.
- 5.3. No Funding payment shall be made unless the University is satisfied (acting reasonably) that the Services specified in clause 3 of this Agreement have been delivered.
- 5.4. The University requires the PIVO Provider to comply with all quality stipulations in accordance with the Agreement in order to be eligible to receive the Funding.
- 5.5. The University can increase or decrease the number of students at its discretion (and shall adjust the Funding accordingly) as set out in the Letter of Coordination.
- 5.6. The University will ensure that the Funding provided in accordance with this contract is provided to the PIVO Provider at the earliest opportunity in accordance with the timescales set out in the Letter of Coordination.

### **6. GOVERNING LAW**

- 6.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.



## **7. MODERN SLAVERY**

- 7.1. The PIVO Provider shall reasonably assist the University with compliance with the Modern Slavery Act 2015 and shall do nothing which might put the University in the position of committing an offence under that Act.
- 7.2. The PIVO Provider hereby warrants that they do not engage in, or condone, the practices of human trafficking, slavery or forced labour in a work environment.
- 7.3. The PIVO Provider hereby warrants that, where they have UK workers, those workers are in receipt of the minimum wage and have not been trafficked into the UK.

## **8. BRIBERY ACT 2010 AND CRIMINAL FINANCES ACT 2017**

- 8.1. The Parties shall comply at all times with the Bribery Act 2010 and Criminal Finances Act 2017 and shall do nothing which constitutes an offence under those Acts, or which might put either Party in the position of committing an offence under those Acts.
- 8.2. The Parties shall indemnify each other against all and any loss, damages or costs sustained by them arising out of any breach by either Party of their obligations at 8.1. of this Agreement.
- 8.3. At the request of either Party and at the other Party's own expense, they shall provide all reasonable assistance to enable the other Party to resist any claim, action, prosecution or proceedings brought against either of them arising from the subject matter of this Agreement, or the circumstances surrounding the entering into of this Agreement, or of either Party's breach of Clause 8.1. of this Agreement, or by virtue of their relationship with each other.





## SCHEDULE 1

### DATA PROTECTION

#### 1. DEFINITIONS

In this Schedule 1 the following definitions shall apply:

- "Applicable Law"** means all applicable laws, statutes, enactments, regulations, declarations, decrees, directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, regulations, rules, regulatory policies, guidelines, codes, other binding restrictions, regulatory permits and licences applicable under law which are in force from time to time during the term of the Agreement, including the rules, codes of conduct, codes of practice, practice requirements and accreditation terms stipulated by any regulatory authority or body to which a Party is subject from time to time as the same are amended, consolidated, modified, re-enacted or replaced;
- "Controller"** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data;
- "Data Exporter"** means a Party making or proposing to make a transfer of Personal Data which is a Restricted Transfer;
- "Data Importer"** means a Party in receipt of Personal Data as a result of a Restricted Transfer;
- "Data Processing Particulars"** means, in relation to any Processing under this Agreement:
- (a) the subject matter and duration of the Processing;
  - (b) the nature and purpose of the Processing;
  - (c) the type of Personal Data being Processed; and
  - (d) the categories of Data Subjects;
- as set out in Appendix 1;
- "Data Protection Impact Assessment"** means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data which includes as a minimum:
- (a) a systematic description of the envisaged Processing and the purposes of the Processing, including, where applicable, the legitimate interest for which the Processing is carried out;
  - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the purposes pursued;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and to demonstrate compliance with the Data Protection Laws;



**"Data Protection Laws"** means:

- (a) any Applicable Law to which a Party is subject from time to time in any territory in which they Process Personal Data and which relates to the protection of individuals with regards to the Processing of Personal Data and privacy rights, including without limitation the GDPR and the e-Privacy Directive and relevant member state laws in the European Economic Area ("EEA") and in relation to the United Kingdom ("UK") the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586), as amended to be referred to as PECR, DPA 2018 and the UK GDPR respectively, as the same are amended, consolidated, modified, re-enacted or replaced from time to time;
- (b) any code of practice or guidance published by a Regulator from time to time; and/or
- (c) any binding pronouncements (including findings, orders, decisions and/or judgements) issued by a Regulator or a court;

**"Data Subject"** means an identified or identifiable natural person to whom Personal Data relates, regardless of whether the person can be identified directly or indirectly;

**"Data Subject Request"** means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his/her rights under the Data Protection Laws including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;

**"Data Transfer Agreement"** means as applicable:

- (a) the standard contractual clauses approved by the European Commission for the transfer of Personal Data to third countries issued by the European Commission Decision of 4 June 2021, as amended, varied, supplemented or substituted from time to time, as applicable in respect of transfers of Personal Data from Controllers or Processors in the EEA to Controllers or Processors in Restricted Countries;
- (b) the addendum approved by the UK Information Commissioner's Office as amended, varied, supplemented or substituted from time to time;
- (c) the standard contractual clauses adopted by the government of the United Kingdom, or approved by the government of the United Kingdom as updated, replaced, consolidated and/or amended from time to time, for transfers of Personal Data from Controllers or Processors in the UK to Controllers or Processors in Restricted Countries; or



- (d) any standard contractual clauses adopted under the Applicable Law to which a Data Exporter is subject, as updated, replaced, consolidated and/or amended from time to time, for transfers of Personal Data from a Data Exporter to Controllers or Processors in Restricted Countries;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

**"Government Access"** means:

- (a) a request for disclosure of Personal Data (which has been transferred in accordance with Paragraph 2.5) by a public authority under the laws of the country of destination; or
- (b) direct access to Personal Data (which has been transferred in accordance with Paragraph 2.5) by a public authority under the laws of the country of destination;

**"Group"** means in respect of either Party, that Party, its holding company, its subsidiaries and any other direct or indirect holding company or subsidiary from time to time of such holding company or subsidiary;

**"Losses"** means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

**"Personal Data"** means any information relating to a Data Subject, including but not limited to any Special Category Personal Data and data relating to criminal convictions and offences;

**"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed and, for the avoidance of doubt, includes a breach of Paragraph 2.3.1(d);

**"Personnel"** means all persons engaged or employed from time to time by the Supplier in connection with this Agreement, including employees, consultants, contractors and permitted agents from time to time;

**"Process"** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or



destruction; (and "Processing" and "Processed" shall be construed accordingly);

**"Processor"**

means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller;

**"Regulator"**

means any local or national agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering, providing guidance on, supervising and enforcing Data Protection Laws, including in the United Kingdom the Information Commissioner's Office, or any successor or replacement body from time to time;

**"Regulator Correspondence"**

means any correspondence or communication (whether written or verbal) from a Regulator in relation to the Processing of Personal Data;

**"Restricted Country"**

means a country, territory or jurisdiction which: (i) is not covered by an adequacy determination by a competent authority with jurisdiction over the Data Exporter; (ii) or otherwise in relation to which a transfer restriction applies under the Applicable Law of the Data Exporter;

**"Restricted Transfer"**

means:

- (a) a transfer of University Data to a Restricted Country; or
- (b) an onward transfer from a Data Importer to a third party, in each case where such transfer would be prohibited by Data Protection Laws of the Data Exporter in the absence of a legal transfer mechanism permitted by the Data Protection Laws;

**"Security Requirements"**

means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws including, in particular:

- (a) a requirement to only Process Personal Data in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;
- (b) a requirement to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. The appropriate level of security shall be assessed by taking into account the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed; and
- (c) the requirements set out at Appendix 2 to this Schedule;

**"Services"**

means Placement Provider services as set out in the Agreement;

**"Sub-Processor"**

means as defined in Paragraph 2.4;



**"Third Party Request"** means a written request from any third party for disclosure of (or access to) Personal Data, including a Data Subject Request (or purported Data Subject Request), a request to rectify, block or erase any Personal Data, any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation, a Government Access request or otherwise, where compliance with such request is required or purported to be required by Applicable Law; and

**"University Data"** means the Personal Data Processed by (or on behalf of) the University under or in connection with this Agreement as more particularly described in Appendix 1 (Data Processing Particulars).

## DATA PROTECTION

### 2.1. Arrangement Between the Parties

2.1.1. The Parties each acknowledge and agree that the factual arrangements between them dictate the classification and role of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, the Parties anticipate that, in respect of the University Data, as between the University and the Supplier for the purposes of this Agreement, the University shall act as the Controller and the Supplier is appointed by the University to and shall act as the Processor in accordance with the terms of this Schedule 1.

2.1.2. Each of the Parties acknowledges and agrees that Appendix 1 (Data Processing Particulars) to this Agreement is an accurate description of the Data Processing Particulars.

2.1.3. Notwithstanding Paragraph 2.1.1 if either Party is deemed to be a joint Controller with the other in relation to the University Data, the Parties agree that they shall:

- a) be jointly responsible for the compliance obligations imposed on a Controller by the Data Protection Laws, and the Parties shall cooperate to do all necessary things to enable performance of such compliance obligations, except that each Party shall be responsible, without limitation, for compliance with its data security obligations where University Data has been transmitted by it, or while University Data is in its possession or control; and
- b) acting reasonably and in good faith seek by way of variation or additional agreement or arrangement, to document the parties' respective obligations in accordance with Data Protection Laws (particularly in respect of communications with Data Subjects, third parties and a Regulator, including in respect of transparency requirements and notification obligations).

2.1.4. Each Party agrees that in performing its obligations under this Agreement, it shall comply with the obligations imposed on it under the Data Protection Laws.

### 2.2. Contact Data

2.2.1. Notwithstanding Paragraph 2.1. the Parties each acknowledge and agree that they may need to Process Personal Data in relation to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Services; and (f) comply with their respective regulatory obligations.



2.2.2. Each Party shall Process such Personal Data for the purposes set out in Paragraph 2.2.1 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with members of their Group and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Paragraph 2.2.1, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.

### 2.3. **Data Processor Obligations**

2.3.1. In relation to any University Data that the University provides or makes available to the Supplier or that the Supplier Processes for and on behalf of the University (the University acting as the Controller) the Supplier shall:

- a) only Process the University Data for and on behalf of the University for the purposes of performing its obligations under this Agreement, and only in accordance with the terms of this Agreement, any Data Transfer Agreement (where applicable) and any documented instructions from the University (unless required to do otherwise by Applicable Law, in which case it shall (unless prohibited from doing so by such Applicable Law) inform the University of such legal requirement before Processing);
- b) keep a record of any Processing of the Personal Data it carries out on behalf of the University.
- c) unless prohibited by Applicable Law, notify the University immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that any of the University's instructions under Paragraph 2.3.1(a) infringe any of the Data Protection Laws;
- d) take, implement and maintain appropriate technical and organisational security measures which are sufficient to comply with:
  - (i) at least the obligations imposed on the University by the Security Requirements; and
  - (ii) the obligations set out in Appendix 2 (Information Security); and at any time where requested provide to the University evidence of its compliance with such requirements promptly, and in any event within forty-eight (48) hours of the request;
- e) hold the University Data in such a manner that it is capable of being distinguished from other data or information processed by the Supplier;
- f) only disclose University Data to its Personnel who are required to assist it in meeting its obligations under this Agreement and ensure that no other Personnel shall have access to such University Data;
- g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who shall have access to the University Data, and ensure that each member of its Personnel shall have entered into appropriate contractually-binding confidentiality undertakings and that they receive periodic data security and privacy training. Such persons include those who Process the University Data or whose roles relate to procuring, developing and/or maintaining technical infrastructure or tools used to Process the University Data;
- h) within thirty (30) calendar days of a request from the University, allow its data processing facilities, procedures and documentation to be submitted for





scrutiny, inspection or audit by the University (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Schedule 1 (Data Protection), and provide reasonable information, assistance and co-operation to the University, including access to relevant Personnel and/ or, on the request of the University, provide the University with written evidence of its compliance with the requirements of this Schedule 1 (Data Protection);

- i) subject to Paragraph 2.3.1(k) not disclose University Data to a third party (including a Sub-Processor or any Group company or affiliate, or any Data Importer) in any circumstances without the University's prior written consent, save in relation to:
  - (i) transfers made pursuant to Paragraph 2.4 (Appointing Sub-Processors) and/or Paragraph 2.5 (International Transfers) of this Agreement; and/or
  - (ii) Third Party Requests in which case it shall comply as applicable with the terms of Paragraph 2.6;
- j) promptly comply with any request from the University to amend, transfer or delete any University Data;
- k) notify the University promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or Regulator Correspondence and shall:
  - (i) not respond to or disclose any University Data in response to any Data Subject Request or Regulator Correspondence without first obtaining the University's prior written consent; and
  - (ii) provide the University with all reasonable co-operation and assistance required by the University in relation to any such Data Subject Request or Regulator Correspondence;
- l) notify the University promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected or threatened Personal Data Breach in relation to the University Data ("Data Loss Event") (and follow-up in writing) and shall, within such timescale specified by the University (acting reasonably and in good faith):
  - (i) seek to recover the compromised data as soon as practicable and implement any measures necessary to restore the security of the compromised Personal Data;
  - (ii) promptly provide the University with a report containing details about the nature of the Data Loss Event and provide the University further information as details become available;
  - (iii) investigate the incident and its cause;
  - (iv) assist the University to make any notifications to the Regulator and affected Data Subjects; and
  - (v) not make any public statements relating to the incident without the prior written approval of the University;
- m) provide the University with reasonable assistance to comply with the obligations imposed on the University by the Data Protection Laws, including:



- (i) compliance with the Security Requirements;
  - (ii) obligations relating to notifications required by the Data Protection Laws to the Regulator and/ or any relevant Data Subjects;
  - (iii) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the Regulator and/or any other relevant regulatory body in respect of any such Data Protection Impact Assessments); and
  - (iv) without undue delay and where feasible not later than seventy-two (72) hours after having become aware of it notify Personal Data Breaches to the Regulator and/or any other relevant regulatory body unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons;
- n) not, whether by act or omission, cause the University to breach any of its obligations under the Data Protection Laws;
  - o) comply with the obligations imposed upon a Processor under the Data Protection Laws and to the extent that the Processor is subject to Applicable Law which requires a higher level of protection for Personal Data than the Data Protection Laws, also comply with such Applicable Law; and
  - p) upon the earlier of:
    - (i) termination or expiry of this Agreement or the relevant Data Transfer Agreement (as applicable); and
    - (ii) the date on which the University Data is no longer relevant to, or necessary for, the provision of the Services, cease Processing all University Data and return and/or permanently and securely destroy the University Data and all copies in its possession or control (such that the University Data is no longer retrievable), as directed in writing by the University and, where requested by the University, certify that such destruction has taken place (promptly, and in any event within forty-eight (48) hours of the request) except to the extent required by Applicable Law to retain the University Data;

2.3.2. Except as otherwise provided, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any Personal Data.

## **2.4. Appointing Sub-Processors**

2.4.1. The Supplier shall not sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the University;

2.4.2. Notwithstanding any consent or approval given by the University under Paragraph 2.4.1, the Supplier shall remain primarily liable to the University for the acts, errors and omissions of any Sub-Processor to whom it discloses University Data, and shall be responsible to the University for the acts, errors and omissions of such Sub-Processor as if they were the Supplier's own acts, errors and omissions to the extent that the Supplier would be liable to the University under this Agreement for those acts, errors and omissions.

## **2.5. International Transfers**

2.5.1. The Supplier shall not and shall ensure that no Sub-Processor shall make a Restricted Transfer without the prior written consent of the University and without taking such measures as are necessary to ensure the transfer is in compliance with Data Protection



Laws, including, where required by the University, entering into an appropriate Data Transfer Agreement.

2.5.2. Where the Supplier or its Sub-Processor wishes to make a Restricted Transfer the following provisions shall apply:

- (a) the Supplier shall submit a written request (at its own cost) to the University for its written approval which shall set out the following details:
  - (i) the intended recipient (Data Importer) and any other parties with whom University Data would be shared;
  - (ii) the proposed University Data which will be transferred and/or Processed;
  - (iii) the proposed country or countries to which University Data will be transferred and/or Processed in;
  - (iv) the proposed transfer, including duration, scale and regularity of the transfer, the length of any onward Processing chain and the number of actors involved and the transmission channels;
  - (v) information on the Applicable Laws of the importing country(ies) which apply to the Data Importer and practices of the importing country(ies) which could potentially impinge on the Data Importer's ability to meet the terms of the Data Transfer Agreement, along with information on the Data Importer's process in responding to a Third Party Request;
  - (vi) without limiting Paragraph 2.5.2(a)(v), how the Supplier will ensure that the Data Subjects have enforceable rights and effective legal remedies;
  - (vii) any Government Access made to the Data Importer or those third parties with whom the Data Importer may/shall onward share University Data; and
  - (viii) the results of a Data Protection Impact Assessment (where applicable).
- (b) In seeking such approval the Supplier shall ensure that it has regard to and complies with current government and Regulator policies, procedures, guidance and codes of practice on, and any approval processes in connection with the Processing and transfers of Personal Data to a Restricted Country.
- (c) If any of the requirements in Paragraph 2.5.2(a) and/or (b) cannot be met no Restricted Transfer shall be permitted.
- (d) Where consent is granted by the University pursuant to Paragraph 2.5.2(a), the Supplier shall comply with such other instructions and shall carry out such other actions as the University may notify in writing, including without limitation:
  - (i) the execution by the University (as Data Exporter) and the Supplier (as Data Importer) of a Data Transfer Agreement and the incorporation of such Data Transfer Agreement into this Agreement; or
  - (ii) in the case of a Sub-Processor acting as Data Importer, the Supplier procuring that the Data Importer at the University's option:
    - (1) enters into a data processing agreement direct with the University on such terms as may be required by the University or with the Supplier on terms which are equivalent to those agreed between the University and the Supplier relating to the relevant University Data transfer (save that the Sub-Processor shall have no right to transfer the University Data to any other third party or otherwise transfer the University Data



outside of the recipient country except for transfers back to the University); and

- (2) enters into a Data Transfer Agreement with the University or the Supplier (as Data Exporter); and
  - (3) adopts such technical and organisational measures which the University deems necessary for the purpose of protection of the University Data and ensuring that the Data Subjects have enforceable rights and effective remedies.
- (e) Where consent is granted by the University pursuant to Paragraph 2.5.2(a), the Supplier shall ensure there are no changes to the Processing locations or onwards transfers of University Data to any other locations, without seeking the University's prior written consent in accordance with this Paragraph 2.5 which may be subject to such measures as the University deems necessary for the purpose of protecting the University Data and ensuring that the Data Subjects have enforceable rights and effective remedies.
- (f) The Supplier agrees that any liabilities, costs, expenses, damages and Losses incurred by the University as a result of a breach of any Data Transfer Agreement by a Data Importer (a "Data Export Loss") will be recoverable by the University from the Supplier as if such Data Export Loss had been caused by the Supplier's own acts or omissions.

### **3. RECOVERABLE LOSS AND COMPENSATION**

- 3.1. The provisions in Clause 4.4. of this Agreement shall not prevent the University from recovering any Losses it incurs in relation to:
- 3.1.1. legal fees, on a solicitor/client basis;
  - 3.1.2. other professional charges and expenses;
  - 3.1.3. disbursements;
  - 3.1.4. costs of investigation including forensic investigation;
  - 3.1.5. cost of breach notification, including notifications to Data Subjects, Regulator(s) or any other parties including listing authorities whether notification is required under Applicable Law or otherwise made in the reasonable belief that notification is necessary;
  - 3.1.6. cost of complaints handling, including providing Data Subjects with credit and/or fraud monitoring services and/or credit reference checks, setting up contact centres (e.g. call centres), and making ex gratia payments;
  - 3.1.7. costs of claims;
  - 3.1.8. cost of litigation;
  - 3.1.9. costs of settlement, including ex gratia payments;
  - 3.1.10. judgment interest; and
  - 3.1.11. penalties, including fines.
- 3.2. To the extent that the Supplier has an entitlement under Data Protection Laws to claim from the University compensation paid by the Supplier to a Data Subject or third party as a result of a breach of Data Protection Laws (in full or in part) by the University, the University shall be liable only for such amount as directly relates to the University's responsibility for any



damage caused to the relevant Data Subject or third party. For the avoidance of doubt the University shall only be liable to make payment to the Supplier under this Clause 3.2, upon receipt of evidence from the Supplier, which shall be to the University's reasonable satisfaction and that clearly demonstrates:

- 3.2.1. that the University has breached Data Protection Laws;
- 3.2.2. that such breach contributed (in part or in full) to the harm caused entitling the relevant Data Subject or third party to receive compensation in accordance with Data Protection Laws; and
- 3.2.3. the proportion of responsibility for the harm caused to the relevant Data Subject or third party which is attributable to the University.

#### **4. INDEMNITY**

- 4.1. The Supplier shall indemnify on demand and keep indemnified and hold harmless the University from and against:
  - 4.1.1. any monetary penalties or fines levied by any Regulator on the University;
  - 4.1.2. the costs of any investigative, corrective or compensatory action required by a Regulator, or of defending any proposed or actual enforcement taken by a Regulator including if such investigation arises as a result of a self-report or otherwise;
  - 4.1.3. any Losses suffered or incurred by, awarded against, or agreed to be paid by, the University pursuant to a claim, action or challenge made by a third party against the University (including by (or on behalf of) a Data Subject); and
  - 4.1.4. except to the extent that Paragraphs 4.1.1 and/ or 4.1.2 and/ or 4.1.3 apply, any Losses suffered or incurred, awarded against, or agreed to be paid by, the University, in each case to the extent arising as a result of a breach by the Supplier (or its Sub-Processors) of this Agreement and/or their respective obligations under the Data Protection Laws.
- 4.2. Nothing in this Agreement will exclude, limit or restrict the Supplier's liability under the indemnity set out in Paragraph 4.1.

#### **5. INSURANCE**

- 5.1. The Supplier agrees:
  - 5.1.1. to obtain and keep in full force and effect at all times a policy or policies of insurance which meet(s) the following conditions:
    - (a) it must cover liability for damage arising to any person;
    - (b) it must apply in relation to the Processing of the University Data; and
    - (c) it must have policy limits and provisions conforming to such requirements as the University may from time to time reasonably prescribe;
  - 5.1.2. to deliver to the University:
    - (a) copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement (to the extent permitted by the insurance conditions); and
    - (b) evidence of premiums paid in relation to such insurance;
  - 5.1.3. to ensure that the University shall be entitled to the benefit under such insurance and that the University's interest will be noted on the policy; and



5.1.4 to not do, or omit to do, anything to vitiate either in whole or in part any of the insurance cover that it is obliged to have and maintain under this Paragraph 5. The Supplier must notify the University immediately if the insurance cover set out in this Paragraph 5 lapses or is denied.

## **6. TERMINATION**

6.1. In the case of any non-compliance by the Supplier or any Sub-Processor with any of the obligations under this Schedule 1, the Data Protection Laws, and/or the University's instructions, the University may, by giving written notice to the Supplier unilaterally:

6.1.1. immediately terminate this Agreement; and/or

6.1.2. suspend any Personal Data submission or sharing under this Agreement; and/or

6.1.3. require the Supplier to cease or suspend any Processing of University Data including in specific locations or by specific Sub-Processors.

## **7. AMENDMENTS**

7.1. The Parties acknowledge that at the date of this Agreement, the Data Protection Laws are subject to change and consultation, Regulatory guidance consultations in respect of Data Transfer Agreements, associated supplementary measures to ensure international transfer rights and compliance matters arising under Articles 28, 46 and 47 of the GDPR/UK GDPR. The Parties acknowledge it may be necessary for the University unilaterally to amend this Agreement, upon written notice to the Supplier, to ensure the University's continued compliance with Applicable Law.

7.2. If at any time, in the University's opinion, it needs to amend this Agreement in order to comply with its obligations under Applicable Law, the Supplier agrees:

7.2.1. where permitted by Applicable Law, the University may, at any time by giving the Supplier thirty (30) days' notice, unilaterally:

(a) replace or require the replacement of any Data Transfer Agreement entered into in connection with this Agreement with any amended or updated version of those clauses approved under Data Protection Laws or other applicable data transfer mechanism which is or may become available (including any standard clauses forming part of an applicable code of conduct or certification scheme) with such details of the transfers as necessary completed by the University;

(b) amend this Agreement to ensure (in its opinion) that any Restricted Transfers or related Processing comply with Data Protection Laws including further to any judgment of an applicable court or guidance issued by a competent Regulator;

7.2.2. where execution of a document is required under Data Protection Laws:

(a) promptly agree, accede to and/or to enter into an appropriate written variation of this Agreement including any Data Transfer Agreement, or to document information or make the amendments which in the University's opinion are required; and

(b) if such amendments are not able to be agreed, the Parties acknowledge and agree that no further Processing of the Personal Data (in particular the University Data) under this Agreement will be carried out until such variation has been agreed and executed.

## **8 GOVERNING LAW**

This Schedule 1 shall be governed by and construed in accordance with English Law.





## APPENDIX 1

### DATA PROTECTION PARTICULARS

The subject matter and duration of the Processing	Student registration information, their names and other identifying information such as email addresses
The nature and purpose of the Processing	Data shared for the purpose of underpinning the educational experience of the students.
The type of Personal Data being Processed	Personal and Sensitive Personal information
The categories of Data Subjects	Students registered and enrolled on St George's programmes of study.
Data Retention/Deletion Period and Process	Up to six years after the Term pursuant to the St George's record retention policy
Locations (including the geographic region) in which the Personal Data may be Processed by the Supplier and/or any Sub-Processor	At the processor's place of business or wherever their servers are located.



## APPENDIX 2

1. At least 128 bit technology encryption



## SCHEDULE 2: DEFINITIONS

- “Bribery Act 2010”** means the Bribery Act 2010 which together with the Criminal Finance Act 2017 provides that St George’s has anti-corruption measures in place to mitigate against the risks of bribery, tax evasion and aggressive tax avoidance and anti-money laundering
- “Clinical Teaching”** means any suitable supervised clinical, practical or other learning experience offered to students in a workplace environment, provided, conducted or arranged by the Placement Provider which usually includes but is not limited to, an NHS Trust, NHS Foundation Trust, GP surgery or other organisations that form part of the National Health Service or that deliver placement learning funded by the NHS which for the purposes of the NHS Education Contract includes the private, independent and voluntary organisations (PIVO).
- “Confidential Information”** means by way of illustration and not limitation information will *prima facie* be confidential information if it relates to:
- (i) raw materials;
  - (ii) research and development;
  - (iii) inventions and discoveries;
  - (iv) formulae and formulations;
  - (v) methods of treatment, processing, manufacture or production, process and production controls including quality controls;
  - (vi) suppliers and their production and delivery capabilities;
  - (vii) students or patients and details of their particular requirements;
  - (viii) costings, profit margins, discounts, rebates and other financial information;
  - (ix) marketing strategies and tactics;
  - (x) current activities and current/future plans relating to any of development, production or sales (including the timing of any such matters);
  - (xi) the development of new products;
  - (xii) production or design secrets;
  - (xiii) technical design or specifications of products;
  - (xiv) customised computer software.
- “Funding”** means the sum due owing and payable by St George’s to the Provider from time to time in consideration for the placement services delivered by the Placement provider to St George’s
- “Governing Law”** means the laws of England and Wales
- “Joint Responsibilities”** means the legal obligations that both the Provider and St George’s share jointly and severally to third parties
- “Modern Slavery Act”** means the Modern Slavery Act 2015 which *inter alia* provides that St George’s publishes a Modern Slavery Statement which is available at [www.sgul.ac.uk](http://www.sgul.ac.uk) and which details the measures St George’s has in place to procure compliance therewith throughout its supply chain
- “PIVO Placement Provider”** means a provider contracted by the University who is a private, independent or voluntary organisation or company registered with the Companies House, or is a registered charity, to offer Clinical Teaching on placements
- “Provider Responsibilities”** means the legal obligations of the Provider that arise out of this Agreement
- “University Responsibilities”** means the legal obligations of St George’s that arise out of this Agreement

