

OXLEAS NHS FOUNDATION TRUST

ALLIED HEALTH PROFESSIONALS PRECEPTORSHIP PROGRAMME

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply herein:

“Charges” means the charges for the Services as set out in the Service Order.

“Trust” means Oxleas NHS Foundation Trust.

“AHP Preceptorship Portal” means the portal through which Users access the Preceptorship Content, at <https://oxleasahppreceptorship.com/>.

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “processing” and “appropriate technical and organisational measures” shall have the meanings given to them therein.

“Documentation” means the content and materials made available to the Users on the AHP Preceptorship Portal, by email or any other method.

“Initial Period” means the period commencing on the date the Trust confirms acceptance of the Service Order and ending on the first anniversary of this Agreement.

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Organisation” means the company, organisation or entity purchasing the Services and with whom the Trust enters into this Agreement, the details of which are set out in the Service Order.

“Preceptorship Content” means the Documentation, support and training provided by the Trust under the AHP Preceptorship Programme.

“Renewal Period” has the meaning given in clause 12.1.

“Services” means access to and use of the Preceptorship Content provided by the Trust to the Users under this Agreement via the AHP Preceptorship Portal, as more particularly described in the Documentation.

“Service Order” means the order form from the Organisation to the Trust setting out the Services required.

“Shared Personal Data” means the Personal Data to be shared between the Parties as set out under clause 8.3.

“Term” means the Initial Period and any subsequent Renewal Period(s).

“Users” means those Organisation-designated named employees, contractors or members as identified in the Service Order or otherwise approved by the Trust up to the maximum number identified in the Service Order.

- 1.2 Clause and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes e-mail.
- 1.11 References to clauses are to the clauses of these Terms.
- 1.12 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. AGREEMENT

- 2.1 These terms and conditions (**“Terms”**) apply to the order of Services by the Organisation and supply of Services by the Trust. The Terms and Service Order comprise the complete understanding between the parties on the subject matter (**“Agreement”**). The Terms apply to the exclusion of any other terms that the Organisation may seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 By completing and submitting a Service Order, the Organisation accepts and agrees to be bound by these Terms in full.

3. THE SERVICES

- 3.1 The Trust will provide the Services during the Term to no more than the number of Users identified in the Service Order. Any User ceasing to be affiliated with the Organisation and/or no longer requiring the Services must cease using and return or destroy all Preceptorship Content in their possession. The Organisation may then reassign that access to an additional User, subject always to the maximum number of Users identified in the Service Order.
- 3.2 The Organisation may request provision of the Services to additional Users at any time during the Term by notifying the Trust and paying the requisite Charges as notified by the Trust and in

accordance with clause 6. If such additional User access is purchased by the Organisation part way through the Initial Period or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Period or then current Renewal Period (as applicable).

- 3.3 The Trust does not provide any warranty or otherwise guarantee access to the Services at all times. Furthermore the Trust reserves the right to carry out emergency maintenance to the AHP Preceptorship Portal from time to time, and may suspend, restrict, withdraw or change any part of the Services without notice.

4. THE TRUST'S RIGHTS

The Trust may accept or reject the request made in a Service Order at its discretion. If the Trust is unable to accept a Service Order, it shall notify the Organisation as soon as reasonably practicable. A Service Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the Trust gives written acceptance of the Service Order.

5. ORGANISATION'S OBLIGATIONS

- 5.1 The Organisation shall cooperate with the Trust in all matters relating to the Services, and provide the Trust with such information and materials as the Trust may reasonably require in order to supply the Services, ensuring that such information is complete and accurate in all material respects.
- 5.2 Unless expressly agreed otherwise in writing by the Trust, the Organisation shall permit the Users to access the AHP Preceptorship Portal and to use the Documentation for the purpose of the Services only. The Organisation shall be responsible for the Users' compliance with both these Terms and the terms of use which each User must accept on accessing the Preceptorship Content, and shall operate appropriate policies to ensure that Users keep secure their access details and do not share any such details with non-Users.
- 5.3 The Organisation shall promptly notify the Trust upon becoming aware of any unauthorised use of the Services or any other breach of security related to the Services.
- 5.4 If the Trust's ability to perform the Services is prevented or delayed by any failure by the Organisation to fulfil any obligation listed in clause 5.1 ("**Organisation Default**"):
- (a) the Trust will be entitled to suspend performance of the Services until the Organisation remedies the Organisation Default, and to rely on the Organisation Default to relieve the Trust from the performance of the Services, in each case to the extent the Organisation Default prevents or delays performance of the Services. In certain circumstances the Organisation Default may entitle the Trust to terminate the Agreement under clause 12;
 - (b) the Trust will not be responsible for any costs or losses the Organisation sustains or incurs arising directly or indirectly from the Trust's failure or delay to perform the Services; and
 - (c) it will be the Organisation's responsibility to reimburse the Trust on written demand for any costs or losses the Trust sustains or incurs arising directly or indirectly from the Organisation Default.

6. CHARGES AND PAYMENT

- 6.1 In consideration of the Trust providing the Services, the Organisation shall pay the Charges in accordance with this clause 6. All amounts paid are non-refundable.

- 6.2 If the Organisation wishes to change the number of Users to which Services will be provided after the Trust accepts the order, and the Trust agrees to the change, the Trust will modify the Charges accordingly.
- 6.3 The Organisation shall pay for the Services in advance as one annual upfront payment for the Initial Period with annual advance payments thereafter for each successive Renewal Period, or otherwise as agreed between the parties and set out in the Service Order. The Trust reserves the right to increase the Charges at the start of each Renewal Period upon 60 days' notice to the Organisation.
- 6.4 The Trust shall invoice the Organisation annually in accordance with clause 6.3 unless otherwise agreed in the Service Order and the Organisation shall pay the Charges to the Trust within 30 days of receipt of the invoice to a bank account nominated in writing by the Trust from time to time.
- 6.5 If the Organisation fails to pay the Trust any sum due under this Agreement on the date due, then, without limiting its remedies under clause 12:
- (a) the Trust may without liability to the Organisation disable the Users' access to the Preceptorship Content and the AHP Preceptorship Portal and the Trust shall be under no obligation to provide any or all of the Services while the relevant sum remains unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at a rate of 4% above the Bank of England's base rate, commencing on the due date and continuing until full paid, whether before or after judgment.
- 6.6 All sums payable to the Trust under this Agreement:
- (a) are exclusive of VAT. Where VAT is payable on the Services, the Organisation shall pay an amount equal thereto on delivery of a VAT invoice;
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Organisation agrees and acknowledges that the Trust owns the materials and the associated Intellectual Property Rights in the materials and the AHP Preceptorship Portal. The Trust and/or its licensors shall retain ownership of all rights, title and interest, including all Intellectual Property Rights, in and to the AHP Preceptorship Portal, the Services, Documentation including its look and feel and any text, images, video, audio or other multimedia content, software or other information or material submitted to or accessible from the AHP Preceptorship Portal, including any video or audio recording of live events.
- 7.2 Except as expressly stated herein, the Organisation shall not acquire any right, title or interest in or to any aspect of the Services, the AHP Preceptorship Portal or the Documentation under this Agreement.

8. DATA PROTECTION

- 8.1 Both parties shall comply with and where reasonable and relevant to the processing of Shared Personal Data in connection with this Agreement assist the other in complying with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.

- 8.2 The parties agree to share the Shared Personal Data for the purpose of enrolling Users in and running the AHP Preceptorship Programme (**Agreed Purpose**). The parties shall not process Shared Personal Data in a way that is incompatible with the Agreed Purpose.
- 8.3 The Shared Personal Data shall include the following types of Personal Data of Users:
- (a) **personal details** (such as name, date of birth and gender)
 - (b) **contact details** (such as the User's address, work telephone number and work email address); and
 - (c) **professional details** (such as the User's professional group, the name of the Trust that employs the User, the User's job title and the User's banding)
- 8.4 Both parties will take the role of independent data Controllers for the purposes of the Data Protection Legislation in relation to the Shared Personal Data and each party shall:
- (a) ensure that it has all necessary notices and consent and lawful bases in place to enable the fair and lawful transfer of the Shared Personal Data;
 - (b) give full information to any Data Subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or transferred to one or more of the parties' successors, assignees or sub-contractors;
 - (c) process the Shared Personal Data only for the purpose of performing its obligations under this Agreement;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the other party, their successors, assignees or sub-contractors as necessary and comply with Article 28 of the UK GDPR when it appoints a third-party Processor to process Shared Personal Data;
 - (e) ensure that all recipients of the Personal Data are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement
 - (f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Shared Personal Data;
 - (g) not transfer any Personal Data received under this Agreement outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer;
 - (h) comply with its obligation to report a Personal Data Breach to the Commissioner under Article 33 of the UK GDPR and (where applicable) Data Subjects under Article 34 of the UK GDPR and shall each, promptly (and in any event within 24 hours) inform the other party if that other party is likely to be affected by the Personal Data Breach irrespective of whether there is a requirement to notify the Commissioner or Data Subjects; and
 - (i) in the event of a dispute or claim brought by a Data Subject or the Commissioner concerning the processing of Shared Personal Data against one or a both of the parties,

inform each other about any such disputes or claims and cooperate with a view to settling them amicably in a timely fashion.

- 8.5 Any party sharing Shared Personal Data warrants and undertakes that it is entitled to provide the Shared Personal Data to the recipient party and will ensure that the Shared Personal Data are accurate.
- 8.6 The parties will periodically review the sharing of the Shared Personal Data under this Agreement to ensure that such sharing continues to be necessary having consideration to the Agreed Purposes.
- 8.7 For the purposes of Data Protection Legislation, the Organisation consents, and shall procure the consent of its employees, to the use by the Trust of any online material produced by the Trust in conjunction with the Organisation for its business purposes including advertising or otherwise promoting its business.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 9.2 Subject to clause 9.1, the Trust shall not be liable to the Organisation, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise for loss of profits, loss of business, depletion of goodwill, loss or corruption of data or information, or any indirect or consequential loss howsoever arising under or in connection with the Agreement.
- 9.3 Except as expressly provided in these Terms:
- (a) the Trust shall have no liability for any damage caused by errors or omissions in any information provided to the Trust by the Organisation in connection with the Services, or any actions taken by the Trust at the Organisation's direction;
 - (b) all warranties, representations, conditions and other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
 - (c) the Services and Documentation are provided to Users on an 'as is' basis.
- 9.4 The Organisation shall indemnify and keep indemnified the Trust fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of the use of, or reliance by any User or the Organisation on, the information provided by the Trust under this Agreement via the AHP Preceptorship Portal, the Documentation or otherwise.
- 9.5 Subject to clauses 9.1, 9.2 and 9.3 the Trust's total liability to the Organisation arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to 100% of the total Charges paid under the Agreement during the twelve (12) months immediately preceding the date on which the claim arose.

10. CONFIDENTIALITY

- 10.1 Each party undertakes that it will not at any time disclose to any person any confidential information concerning one another's business, affairs, suppliers, clients or suppliers, except as permitted by clause 10.2.

- 10.2 Each party may disclose the other's confidential information:
- (a) to such of its respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising the party's respective rights or carrying out their respective obligations under the Agreement. Each party shall ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 10; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Each party may only use the other's confidential information for the purpose of fulfilling their respective obligations under the Agreement.

11. AVAILABILITY AND ACCURACY OF INFORMATION

- 11.1 The Trust gives no warranty that the AHP Preceptorship Portal will be available at all times nor that Users' use of the AHP Preceptorship Portal will be uninterrupted. Any information provided as part of the Services, whether through the AHP Preceptorship Portal, the Documentation or otherwise, is provided by the Trust in good faith on an "as is" basis. The Trust does not make any representation or warranty that the information provided is reliable, accurate or complete and reliance on such information is at the User's or the Organisation's risk, as applicable. The Trust does not accept responsibility for loss suffered as a result of reliance by the Organisation or Users upon the accuracy or currency of information provided.
- 11.2 This clause 11 will survive termination of any access to the AHP Preceptorship Portal.

12. TERM AND TERMINATION

- 12.1 Unless otherwise terminated in accordance with the terms of this Agreement, the Agreement shall commence on the date the Trust confirms acceptance of the Service Order and continue for the Initial Period, and thereafter this Agreement shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**") unless:
- (a) the Organisation notifies the Trust of termination, in writing, by email to oxl-tr.ahp.preceptorship@nhs.net at least 30 days before the end of the Initial Period or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Period or Renewal Period; or
 - (b) the Trust notifies the Organisation of termination, in writing at least 90 days before the end of the Initial Period or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Period or Renewal Period.
- 12.2 Without affecting any other right or remedy available to it, the Trust may terminate the Agreement with immediate effect by giving written notice to the Organisation if:
- (a) the Organisation fails to pay any amount due under the Agreement on the due date for payment and such invoice remains unpaid not less than thirty (30) days after the Organisation is notified in writing to make such payment;
 - (b) the Organisation commits a material breach of any of these Terms and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days of being notified in writing to do so; or
 - (c) the Organisation suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Agreement for any reason, any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, shall not be affected or prejudiced.
- 13.2 The following clauses shall continue in force: clause 1 (Definitions and Interpretation), clause 7 (Intellectual Property Rights), clause 9 (Limitation of Liability), clause 10 (Confidentiality), clause 12 (Termination), clause 13 (Consequences of Termination), clause 17 (Waiver), clause 18 (Severance), clause 23 (Governing Law) and clause 24 (Jurisdiction).
- 13.3 On termination of the Agreement the Trust will revoke the access rights of all Users to use the AHP Preceptorship Portal and the Preceptorship Content and all Users must cease using and return or destroy all Preceptorship Content in their possession. Notwithstanding the general obligation under clause 5.2, the Organisation shall ensure all Users' compliance with this clause 13.3.

14. FORCE MAJEURE

- 14.1 The Trust shall not be liable to the Organisation under the Agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, epidemic or pandemic, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (a "**Force Majeure Event**"), provided that the Organisation is notified in writing of such an event and its expected duration.
- 14.2 If the Trust is unable to perform its obligations under this Agreement as a result of a Force Majeure Event for a period in excess of two (2) months following notification under clause 14.1, the Organisation may terminate the Agreement by notice in writing with immediate effect.

15. ASSIGNMENT AND OTHER DEALINGS

Neither party shall assign, transfer, charge, sub-contract or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

16. VARIATION

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE

If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, such provision shall be struck out and the other provisions shall remain in full force and effect.

19. ENTIRE AGREEMENT

The Agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.

21. THIRD PARTY RIGHTS

A person who is not a party to the Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

22.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Service Order, or such other address as may have been notified by that party for such purposes, or by email to the other party's email address as set out in this Agreement.

22.2 The provisions of this clause 22 shall not apply to the service of any process in any legal action or proceedings where the normal legal rules as to delivery will apply.

23. GOVERNING LAW

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.

24. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.