



# NHS EDUCATION CONTRACT

## 2021-2024

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**DATED**

1 April 2022

**NHS EDUCATION CONTRACT**

between

**HEALTH EDUCATION ENGLAND**

and

**SOUTH DEVON COLLEGE**

Signed by [REDACTED] for and on behalf of **Health Education England**

Signature:

[REDACTED]

Date: 1  
September 2022

Signed by [REDACTED] for and on behalf of **SOUTH DEVON COLLEGE**

[REDACTED]

Signature:

Date: 11/11/2022

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This contract is dated 1 April 2022

## **Parties**

- (1) HEALTH EDUCATION ENGLAND**, whose head office is at 1st Floor, Blenheim House, Duncombe Street, Leeds, LS1 4PL, (“**HEE**”); and
- (2) SOUTH DEVON COLLEGE**, whose head office is at Vantage Point, Long Road Paignton, TQ4 7EJ, (the “**Provider**”),

each a **Party** and together, the **Parties**.

## **BACKGROUND**

- A) Health Education England is an executive non-departmental public body at arms-length from the Department of Health and Social Care, whilst remaining accountable to the Secretary of State for Health and Social Care. In accordance with the Care Act 2014, Health Education England is responsible for the leadership of all healthcare education and training for those employed by the NHS and for those seeking NHS employment. Health Education England also has statutory obligations for the quality of the Services delivered for which it funds for the safety and protection of Learners and Service Users.
- B) This contract is the mechanism by which HEE entrusts Providers to undertake healthcare education and training activities. This contract is limited to use for the following across all healthcare professions:
  - (i) future workforce funds (including, but not limited to, placement tariff, salary support, and where appropriate unless commissioned separately tuition funds); and
  - (ii) workforce development funds (including, but not limited to, Workforce Transformation).
- C) This contract includes all healthcare education and training regardless of the Funding mechanism, and applies unilaterally across all areas which HEE funds (i.e. all pre-registration healthcare programmes where HEE funds placement activity but not tuition).

## **IT IS AGREED**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this contract.

## 1.1 Definitions.

**Actual Monthly Value:** for the relevant month, the aggregate of all Funding payments made to the Provider under this contract in respect of all Services delivered in that month (excluding VAT but before any deductions, withholdings or set-off).

**Affiliate:** in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party from time to time.

**Applicable Laws:** all applicable laws, statutes, regulations, codes and directions from time to time in force.

**Border Force:** the border control agency of the Government of the United Kingdom.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** these hours are, for the purposes of a Business Day, to be determined as between 08:00 and 18:00 hours.

**Change in Control:** any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (the effect of which is to confer on any person (when aggregated with any interest(s) already held or controlled) the ability to control the exercise of 50% or more of the total voting rights exercisable at general meetings of that corporation on all, or substantially all, matters), provided that a Change in Control shall be deemed not to have occurred if after any such sale or disposal the same entities directly or indirectly exercise the same degree of control over the relevant corporation; or

**Clinical Educators:** means Educational Supervisor and Named Clinical Supervisor.

**Clinical Programmes:** all education and training relating to all professions other than medicine.

**Confidential Information:** any information or data in whatever form disclosed, which by its nature is confidential or which the disclosing Party acting reasonably states in writing to the receiving Party is to be regarded as confidential, or which the disclosing Party acting reasonably has marked 'confidential' (including, financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not Service User Health Records or information relating to a particular Service User, or personal data, or information which is disclosed in accordance with clause **Error! Reference source not found.** in response to an FOIA or EIRs request, or information which is published as a result of government policy in relation to transparency.

**Consent:**

- a) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Applicable Laws and/or Guidance for or in connection with the performance of Services; and/or
- b) any necessary consent or agreement from any third party needed either for the performance of the Provider's obligations under this contract or for the provision by the Provider of the Services in accordance with this contract, including any registration with any relevant Regulator.

**Contract Management Meeting:** a meeting of HEE and the Provider held in accordance with clause **Error! Reference source not found..**

**Contract Performance Notice:**

- a) a notice given by HEE to the Provider under clause **Error! Reference source not found.**, alleging failure by the Provider to comply with any obligation on its part under this contract; or
- b) a notice given by the Provider to HEE under clause **Error! Reference source not found.** alleging failure by HEE to comply with any obligation on its part under this contract,  
as appropriate.

**Contracting Authority:** means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than HEE.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** have the meanings as defined in the Data Protection Legislation.

**Core Skills Training Framework:** the framework and any associated documents relating to core skills training as set out in the Skills for Health webpage (as may be updated or superseded from time to time).

**COVID-19:** severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

**Data Protection Legislation:** all Applicable Laws connected to data protection or privacy including without limitation the UK GDPR as defined in the Data Protection Act 2018; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and the Privacy and Electronic Communications Directive 2002/58/EC all as retained and amended under UK law.

**Disclosure and Barring Service or DBS:** the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012.

**E-Learning:** computer based learning.



**Education Provider:** the contracted provider which undertakes educational provision services, and which is an education provider of academic studies, including but not limited to a HEI, faculty, school, further education provider, or an education and training organisation.

**Educational Supervisor:** named educator who is selected and appropriately trained to be responsible for the overall supervision and management of an individual Learner's educational progress during a Placement or series of Placements.

**EIRs:** the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Employed Learners:** those Learners who are recruited into NHS posts on Programmes leading to statutory or voluntary registration, who are for the duration of their training only employed by a Provider, or another contractually agreed Lead Employer, and for whom HEE may provide a financial contribution.

**Enhanced DBS & Barred List Check:** a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list, adults' barred list and children's and adults' barred list.

**Enhanced DBS Check:** a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.

**Enhanced DBS Position:** any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Check or an Enhanced DBS & Barred List Check (as appropriate) is permitted.

**Exception Report:** a report issued in accordance with clause **Error! Reference source not found.** notifying the relevant Party's Governing Body of that Party's breach of a Remedial Action Plan and failure to remedy that breach.

**Expiry Date:** the last day of the Term.

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Freedom To Speak Up Guardian:** the individual appointed by the Provider and whose identity is communicated to HEE from time to time, in accordance with the Department of Health and Social Care publication 'Learning Not Blaming' available on the government webpage (as may be updated or superseded from time to time).

**Funding:** the funding payable for the Services and the Programmes, as set out in Schedule 2.

**Good Practice:** using standards, practices, methods and procedures conforming to Applicable Laws and Guidance and reflecting up-to-date published evidence and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a Provider and/or member of Staff providing services the same as or similar to the Services at the time the Services are provided.

**Governing Body:** in respect of any Party, the board of directors, governing body, executive team or other body having overall responsibility for the actions of that Party.

**Governing Documents:** a Party's standing orders, scheme of delegation, and standing financial instructions, and any other such governing documents, as may be updated, replaced, or superseded from time to time.

**Guidance:** any applicable health or social care guidance, guidelines, direction or determination, framework, code of practice, standard or requirement to which HEE and/or the Provider have a duty to have regard (and whether specifically mentioned in this contract or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by HEE and/or any relevant Regulator.

**Health and Safety Legislation:** the Health and Safety at Work Act 1974 and any regulations made by the Secretary of State pursuant to section 15 (1) thereof.

**Healthcare System:** the local economic health and social care system, referred to as a Sustainability and Transformation Partnership (STP), or an Integrated Care System (ICS) or any other partnership which brings together health and social care organisations.

**HEE Equipment:** any equipment provided by HEE, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in Schedule 1.

**HEE Materials:** all documents, information, items and materials in any form, whether owned by HEE or a third Party, which are provided by HEE to the Provider in connection with the Services.

**HEE Quality Framework:** the multi-professional education and training quality framework published by HEE and as amended, replaced or superseded thereafter from time to time, measuring the quality of education and training across Learning Environments in England.

**HEE's Representative:** either a Regional Director, National Director, regional manager and/or a national manager of HEE.

**HEI:** a higher educational institute.

**HRA:** the Human Rights Act 1998.

**Immediate Action Plan:** a plan setting out immediate actions to be undertaken by the Provider to protect the safety of Services to Learners, Service Users, the public and/or Staff.

**Insolvency Event:** the occurrence of any of the following events in respect of the Provider: (i) the Provider being, or being deemed for the purposes of any Applicable Laws or Guidance to be, unable to pay its debts or insolvent; (ii) the Provider admitting its inability to pay its debts as they fall due; (iii) the value of the Provider's assets being less than its liabilities taking into account contingent and prospective liabilities; (iv) the Provider suspending payments on any of its debts or announces an intention to do so; (v) by reason of actual or anticipated financial difficulties, the Provider commencing negotiations with creditors generally with a view to rescheduling any of its indebtedness; (vi) a moratorium is declared in respect of any of the Provider's indebtedness; (vii) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider; (viii) a composition, assignment or arrangement with any creditor of any member of the Provider; (ix) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the Provider or any of its assets; (x) a resolution of the Provider or its directors is passed to petition or apply for the Provider's winding-up or administration; (xi) the Provider's directors giving written notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, or administrator (whether out of court or otherwise); or (xii) if the Provider suffers any event analogous to the events set out in (i) to (xi) of this definition in any jurisdiction in which it is incorporated or resident.

**Intellectual Property Rights:** 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 shall subsist now or in the future in any part of the world.

**JI Report:** a report detailing the findings and outcomes of a Joint

**Joint Investigation:** an investigation into the matters referred to in a Contract Performance Notice in accordance with clause **Error! Reference source not found..**

**KPI:** key performance indicator.

**Learner:** a student, trainee or other category of learner actively undertaking and participating in a Programme or deferred from a Programme, including an employee of the Provider who is in education and/or training who is individually or collectively supported by HEE funding to undertake that Programme or training and to whom the Services are provided (excluding those who are temporarily suspended), and **Learners** shall be construed accordingly. Learner also includes any person receiving funding support from HEE, including placement tariff.

**Lead Employer:** a third party whom it is agreed will act as employer of Staff or Learners.

**Learning Environments:** an environment in which Learners acquire knowledge, information, comprehension or skill by study, instruction or experience in all fields of healthcare which are relevant to Programme, such as academic-taught learning environment or a work-based learning environment.

**Named Clinical Supervisor (also called Practice Supervisor):** named educator and experienced clinician, who is selected and appropriately trained to be responsible for overseeing an individual Learner's work and who provides developmental feedback during a Placement.

**National Education and Training Survey (NETS):** the HEE National Education and Training Survey (NETS) from time to time, an online survey provided by HEE to all Learners.

**National Director:** a person with delegated authority from HEE to act for and on behalf of HEE on a national basis.

**National Guardian's Office:** the office of the National Guardian, which provides advice on the freedom to speak up guardian role and supports the freedom to speak up guardian network.

**National Guardian's Office Guidance:** the example job description for a freedom to speak up guardian and other guidance published by the National Guardian's Office, available on the CQC webpage (as may be updated or superseded from time to time).

**National Variation:** a variation mandated by HEE to incorporate changes to Applicable Laws and/or Guidance as they may affect this contract and notified to the Parties by whatever means HEE may consider appropriate.

**Non-Employed Learner:** those Learners who are on Programmes leading to statutory or voluntary registration, or who are undertaking further development of their profession, and all for whom HEE may commission their Placement.

**NHS Body or NHS Bodies:** has the meaning given to it in section 275 of the 2006 Act.

**NHS Brand:** the name and logo of the NHS and any other names, logos and graphical presentations as held by the Secretary of State required to be used in connection with the provision of the Services.

**NHS Branding Guidelines:** NHS brand policy and guidelines, as revised, updated or re-issued from time to time by NHS England and/or the Department of Health and Social Care, and which are available on the NHS England webpage (as may be updated or superseded from time to time).

**NHS Employment Check Standards:** the pre-appointment checks that are required by Applicable Laws and/or Guidance, including those that are mandated by any Regulator's policy, and those that are required for access to Service User Health Records, available on the NHS Employers webpage (as may be updated or superseded from time to time).

**Placement:** any suitable supervised clinical, practical or other learning experience in a workplace environment provided, conducted or arranged by the Placement Provider for Learners; usually but not limited to an NHS Trust, NHS Foundation Trust, GP surgery, dental practice and other organisations that form part of the National Health Service or who deliver placement learning funded by the NHS which for the purposes of this contract includes the private and voluntary sectors but shall only include such placements which are funded and/or managed by HEE.

**Placement Agreement:** an agreement between an Education Provider and a Placement Provider relating to placement activities which may be in the form agreed by an Education Provider and a Placement Provider.

**Placement Provider:** the contracted provider who is an organisation which offers Placements.

**Premises:** the premises from where the Services shall be provided.

**Previous Contract:** a contract between HEE and the Provider for the delivery of services which are the same or substantially the same as the Services, the term of which immediately precedes the Term.

**Programme:** any of the pre-qualification programmes, undergraduate medical and dental programmes, post graduate medical and dental training programmes and all other Clinical Programmes at undergraduate and postgraduate level, as may be applicable to the particular context, whether funded or not by HEE.

**Prohibited Act:** the Provider:

- a) offering, giving, or agreeing to give HEE (or any of their officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this contract or any other contract with the Provider, or for showing or not showing favour or disfavour to any person in relation to this contract or any other contract with the Provider; and
- b) in connection with this contract, paying or agreeing to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to HEE; or
- c) committing an offence under the Bribery Act 2010.

**Provider:** for the avoidance of doubt, Provider means both Education Provider and Placement Provider.

**Provider Outputs:** any output of the Services to be provided by the Provider to HEE as specified in **Error! Reference source not found.** and any other documents, products and materials provided by the Provider to HEE in relation to the Services.

**Provider's Representative:** such person with delegated authority to act on behalf of the Provider as notified by the Provider to HEE from time to time in accordance with clause 24.2;

**Quality and Performance Requirements:** the requirements set out in Schedule 3.

**Raising Concerns Policy for the NHS:** the model whistleblowing policy for NHS organisations, published by NHS England and NHS Improvement, available on the NHS Improvement webpage (as may be updated or superseded from time to time).

**Regional Director:** the person with delegated authority from HEE to act for and on behalf of HEE within any given Region.

**Region:** any one or more of the seven (7) HEE geographical regions which are set out as follows: (i) Midlands, (ii) East of England, (iii) London, (iv) North East and Yorkshire, (v) North West, (vi) South East, (vii) South West.

**Regulator:** any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Party and/or Staff must comply or to which it or they must have regard, including: (i) the Care Quality Commission; (ii) NHS Improvement; (iii) NHS England / Improvement (including Monitor); (iv) the Department of Health and Social Care; (v) the National Institute for Clinical Excellence; (vi) Healthwatch England and Local Healthwatch; (vii) Public Health England; (viii) the General Pharmaceutical Council; (ix) the Healthcare Safety Investigation Branch; (x) the Information Commissioner; (xi) the General Medical Council; (xii) the Nursing and Midwifery Council; (xiii) the Health and Care Professions Council; (xiv) the General Dental Council, (xv) the Office for

Students, and (xvi) the Institute for Apprenticeships and Technical Education, and any statutory or other body which supersedes or replaces such body.

**Remedial Action Plan:** a plan to rectify a breach of or performance failure under this contract (or, where appropriate, a Previous Contract in accordance with the terms of such Previous Contract), specifying actions and improvements required, dates by which they must be achieved and consequences for failure to do so, as further described in clause 26.

**Review Meeting:** a meeting to be held in accordance with clause **Error! Reference source not found.** at the intervals set out in clause 27 or as otherwise requested in accordance with clause 27.

**Services:** the services as set out in Schedule 1, including services which are incidental or ancillary to such services.

**Service User:** a patient or service user for whom a Provider has statutory responsibility.

**Service User Health Record:** a record which consists of information and correspondence relating to the particular physical or mental health or condition of a Service User (whether in electronic form or otherwise), including any such record generated by a previous provider of services to the Service User which is required to be retained by the Provider for medico-legal purposes.

**Staff:** Provider employees that deliver and support the Services.

**Standard DBS Check:** a disclosure of information which contains details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions.

**Standard DBS Position:** any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted: <https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>.

**Suspension Event:** the occurrence of any of the following:

- a) HEE and/or any Regulator having reasonable grounds to believe that the Provider is or may be in breach of Applicable Laws and/or Guidance, or in material breach of the Quality and Performance Requirements or regulatory compliance standards issued by a Regulator; or
- b) HEE and/or any Regulator having reasonable and material concerns as to the continuity, quality or outcomes of any Service, or for the health and safety of any Service User and/or Learner; or
- c) the Provider receiving a Contract Performance Notice in respect of a Service within 12 months after having agreed to implement a Remedial Action Plan in respect of the same issue with that Service; or

- d) HEE, acting reasonably, considering that the circumstances constitute an emergency (which may include an Event of Force Majeure affecting provision of a Service or Services); or
- e) an Exception Report being issued under clause **Error! Reference source not found.** and the Provider's Governing Body failing to procure the rectification of the relevant breach of the Remedial Action Plan within the timescales indicated in that Exception Report; or
- f) the Placement Provider or any Sub-Contractor being prevented from providing a Service due to the termination, suspension, restriction or variation of any Consent or Monitor's Licence.

**Tri-Partite Agreement or TPA:** a nationwide framework agreement entered into between HEE, a placement provider, and an education provider that sets out the scope, roles and responsibilities and funding mechanism for healthcare education and training.

**VAT:** value added tax or any equivalent tax chargeable in the

UK. **WRES:** the NHS Workforce Race Equality Standard.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this contract and shall have effect as if set out in full in the body of this contract. Any reference to this contract includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This contract shall be binding on, and enure to the benefit of, the Parties to this contract and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns.



- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.12 A reference to **writing** or **written** includes either letter or email only.
- 1.13 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.14 A reference to **this contract** or to any other contract or document referred to in this contract is a reference of this contract or such other contract or document, in each case as varied from time to time.
- 1.15 References to clauses and Schedules are to the clauses and Schedules of this contract and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Commencement and duration**

- 2.1 This contract shall commence on 1 April 2022 and shall continue, unless terminated earlier in accordance with clause 38, until the second anniversary of commencement of this contract when it shall terminate automatically without notice (the “**Term**”). For the avoidance of doubt, this contract terminates on 1 April 2024.
- 2.2 For the avoidance of doubt, there is no automatic roll-over of this contract on termination or expiry of the Term.

### **3. The Services**

- 3.1 The Provider shall provide or procure the provision of the Services to HEE in accordance with this contract from 1 April 2022 and as specified in Schedule 1.
- 3.2 The Parties acknowledge that the Staff of the Provider (and the Provider) are not acting as agents of HEE when carrying out the Services.

### **4. Provider's warranties**

- 4.1 The Provider warrants, represents and undertakes that:
- (a) it has full power and authority to enter into this contract and to deliver the Services, and that all necessary approvals and Consents have been obtained and are in full force and effect;
  - (b) the execution of this contract does not and shall not contravene or conflict with its Governing Documents or any legal obligations (including under contract) to which it is subject;
  - (c) any information provided by the Provider is in all material respects accurate and not misleading, and since its provision there has not been any material change to that information or to the Provider's position or developments that would have adversely affected the decision of a reasonable public sector funder to fund the Services substantially on the terms of this contract;
  - (d) to the best of its knowledge, nothing shall have, or is likely to have, a material adverse effect on its ability to deliver the Services (assuming receipt of the Funding); and
  - (e) it has, and shall maintain, adequate insurances in respect of the Services in accordance with clause 35.

### **5. Provider's responsibilities**

- 5.1 The Provider shall manage and supply the Services in accordance with this contract in all material respects.
- 5.2 [Not applicable] The Provider shall meet the Milestones specified in Schedule 1.
- 5.3 The Provider shall appoint a manager for the Services, such person as identified in Schedule 1. That person shall have authority to contractually bind the Provider on all matters relating to the Services. The Provider shall use all reasonable endeavours to ensure that the same person acts as the Provider's manager throughout the term of this contract, but may replace that person from

time to time where reasonably necessary in the interests of the Provider's business.

- 5.4 The Provider shall ensure they attend and prepare as necessary for any Review Meetings convened under clause 27 of this contract, and shall acknowledge a request from HEE to hold a Review Meeting or an extra-ordinary review meeting within three 3 Business Days.
- 5.5 The Provider shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Premises.
- 5.6 The Provider undertakes to fulfil the obligations of its roles and responsibilities set out in the HEE Quality Framework and the terms of this contract, including demonstrating leadership accountability for educational governance within the organisation such as at board level, senior leadership level or equivalent that ensures effective accountability for continuous improvement of quality and performance.
- 5.7 The Provider shall provide the Services:
- (a) in accordance with the terms of this contract;
  - (b) with all due skill care and diligence using appropriately experienced, qualified and trained personnel;
  - (c) in accordance with Good Practice and more particularly the HEE Quality Framework;
  - (d) in accordance with regulatory requirements of any Regulator in respect of the Services;
  - (e) in compliance with Applicable Laws and Guidance (including the holding and maintaining of all necessary licences, authorisations and permissions in order to ensure compliance in all respects with its obligations under this contract);
  - (f) using all reasonable endeavours to ensure that it does not do, and to procure that none of its employees, directors, officers or agents does, anything that may damage the name, reputation or goodwill of HEE or the NHS in any material respect; and
  - (g) in a manner which does not infringe the Intellectual Property Rights of any third Party.
- 5.8 The Provider shall ensure invoices are sent to HEE in a timely fashion, in accordance with Schedule 2.

- 5.9 The Provider shall ensure that there is responsibility for compliance with this contract at the highest governance level within its organisation for healthcare education and training, this is expected to be at board level, with a nominated director responsible for all education and training. The Provider shall report to this board and publicly all activity and funding associated with this contract.

## **6. Placement Provider responsibilities**

- 6.1 Placement Providers shall identify and appoint sufficient numbers of Clinical Educators to enable the Services to be provided in all respects and at all times in accordance with this contract. Placement Providers are responsible for the management of Clinical Educators.
- 6.2 Placement Providers shall enable educational and Clinical Educators to participate in education and training events such as recruitment and assessments.
- 6.3 Placement Provider shall ensure Clinical Educators have the appropriate time built into their job plans, roles, and workload to undertake their role appropriately as a Clinical Educator.
- 6.4 Placement Providers shall ensure Clinical Educators have access to continuing professional development, specifically in their role as a Clinical Educator.
- 6.5 Placement Providers must ensure for educational and Clinical Educators that the appropriate time is built into their job plans, roles, and workload to undertake the activities specified in clause 6.2 to support development of Learners.
- 6.6 Placement Providers must ensure that appropriate supervision and clinical education for Learners is provided at all times during the Term. Placement Providers must ensure that supervisors meet the HEE Quality Framework and Regulator requirements on supervision.
- 6.7 Placement Providers should fully integrate education and training into their plans for clinical services, in order to ensure that educators and supervisors are able to fulfil their obligations to continue to grow the workforce and to support Learners.
- 6.8 The Placement Provider must perform the Services in compliance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

- (b) any HEE equality and diversity policies, or other reasonable requirements relating to equality or diversity, communicated to it by HEE;
- (c) the HRA as if it was a public authority for the purposes of that Act; and
- (d) widening participation plans by the Education Provider.

6.9 Placement Providers shall offer Placement shifts to Learners which may take place within 24 hours per day and 365 days per year including:

- (a) both on and off a Business Day, where they operate;
- (b) both within Business Hours and outside of Business Hours. where they operate; and
- (c) which are outside the local area of the Learner to that Learner if requested by HEE or an Education Provider.

6.10 The Placement Provider shall ensure that, in partnership with the Education Provider, they are compliant with relevant Regulator's obligations.

## **7. [Not applicable] Education Provider's responsibilities**

## **8. HEE's responsibilities**

8.1 HEE shall:

- (a) co-operate and adopt a partnership approach with the Provider in all matters relating to the Services;
- (b) appoint a regional manager for the Services, to work with the HEE Representative. Only the HEE Representative shall have the authority to contractually bind HEE on matters relating to the Services;
- (c) arrange Contract Management Meetings in accordance with clause 26;
- (d) arrange Review Meetings in accordance with clause 27;
- (e) provide to the Provider in a timely manner all documents, information, items and materials in any form (whether owned by HEE or third party) required under Schedule 1 or otherwise reasonably required by the Provider in connection with the Services and ensure that they are accurate and complete in all material respects;
- (f) unless otherwise specified, ensure any formal communication under this contract is responded to within three 3 Business Days and which includes agreement for a detailed response within a reasonable timeframe;
- (g) provide Funding in accordance with Schedule 2 on receipt of a valid invoice;
- (h) ensure that the Provider has access to the HEE Quality Framework;

- (i) engage with other relevant national bodies, government, Regulators, and arm's length bodies to review the performance and suitability of the Provider to undertake education and training for HEE;
- (j) initiate the TPA and/or TPA-UGME process with parties as requested, or as required by HEE;
- (k) support the Provider throughout their engagement of the Services, and ensure collaborative and partnership practice is enabled for the Healthcare System, with the Provider; and
- (l) enable, so far as reasonably possible, the sharing of best practice for all providers for the purpose of innovation and transformation of the NHS workforce, either current or future.

8.2 If the Provider's performance of its obligations under this contract is prevented or delayed by any act or omission of HEE, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Provider shall be allowed a proportionate extension of time to perform its obligations equal to the delay caused by HEE.

## **9. Tri-partite Agreement**

9.1 Where requested to do so by HEE, the Provider shall enter into a Tri-partite Agreement (TPA), with any parties nominated by HEE for the education and training of Learners.

## **10. Co-operation**

10.1 The Provider shall co-operate with HEE to:

- (a) where the Provider is providing Services relating to Medical Programmes, engage with the undergraduate medical liaison group which shall include representatives from HEE, the Provider, and other stakeholders to meet regularly to ensure cooperation between providers and to review any TPA on a bi-annual basis;
- (b) provide learning experiences in partnership with other providers in regard to the provision of all Funded education and training and where directed by HEE;
- (c) co-operate within the health economy and with all other providers in the Region; and
- (d) partner with other providers in the form of the TPA and/or TPA-UGME and/or Placement Agreement, and not seek to implement additional unnecessary bureaucracy for Placements.

10.2 The Provider shall share any information relevant to the Services with the regional People Board and Healthcare System to inform workforce decision making at HEE's request or the request of the Healthcare System and/or People Board.

10.3 The Provider shall cooperate and work in partnership with other providers in the Region in order to:

- (a) address workforce priorities;
- (b) promote equality and diversity; and
- (c) address local health economy system needs.

10.4 The Provider shall co-operate and work in partnership with HEE in addressing workforce priorities, equality and diversity requirements, quality improvements, and local health economy system needs.

## **11. Staff**

11.1 The Parties agree and acknowledge that the recruitment, retention and continuing professional and personal development of Staff that deliver and support the Services is essential to the successful development of the Learners and performance of this contract.

11.2 Where the Provider is a Placement Provider, the Provider shall ensure that it has sufficient, appropriately registered, qualified and experienced medical, nursing and other clinical and non-clinical Staff to enable the Services to be provided in all respects and at all times in accordance with this contract.

11.3 The Provider shall ensure that their systems are used so that Staff provide Learners and/or Clinical Educators with:

- (a) proper and sufficient induction, continuing professional and personal development, clinical supervision, training and instruction;
- (b) full and detailed appraisals (in terms of performance and on-going education and training); and
- (c) professional leadership appropriate to the Services.

11.4 The Provider shall undertake reviews to ensure that the provisions of clause 11.3 are complied with throughout the Term.

11.5 As part of the review process referred to in clause 11.4 and clause 11.7, the Provider shall seek feedback from the Learners in line with any conditions of the Regulator, and co-operate with NETS.

- 11.6 The Provider shall ensure its Staff are able to access education and training (as may be required) to support the provision of the Services in accordance with this contract.
- 11.7 The Provider shall implement systems and procedures to ensure that its Staff are appropriately monitored, appraised and reviewed in relation to the provision of the Services and shall report an incident affecting any Learner immediately to HEE.
- 11.8 The Provider shall ensure that all Staff have all necessary permits and/or entitlements to work in England and may do so legally at all times when they are employed or engaged in the provision of Services.
- 11.9 The Provider shall be entirely responsible for the employment or the engagement and the conditions of service of all Staff including, without limitation, the payment of all remuneration and benefits.
- 11.10 The Provider shall ensure that its organisation promotes a culture of positivity and responsibility towards healthcare education and training.
- 11.11 At the request of HEE, the Provider must provide details of its workforce learning needs and Learner/training needs analysis along with a summary of Staff training provided and appraisals undertaken, to inform requirements of future healthcare education and workforce needs.
- 11.12 [Not applicable]
- 11.13 [Not applicable]
- 11.14 The Provider must:
- (a) ensure that all Staff meet the requirements of the Regulator at all times during the Term;
  - (b) have in place, promote and operate (and must ensure that all Sub-Contractors have in place, promote, and operate) a policy and effective procedures, in accordance with Raising Concerns Policy for the NHS, to ensure that Staff and Learners have appropriate means through which they may speak up about any concerns they may have in relation to the Services; and
  - (c) ensure that nothing in any contract of employment, contract for services, student charter or student contract, or any other contract entered into by it or any Sub-Contractor with any member of Staff or Learner shall prevent or inhibit, or purport to prevent or inhibit, that member of Staff or Learner from



speaking up about any concerns they may have in relation to the quality and/or safety of the care provided by their employer or by any other organisation, nor from speaking up to any Regulator or professional body in accordance with their professional and ethical obligations including those obligations set out in guidance issued by any Regulator or professional body from time to time, nor prejudice any right of that member of Staff or Learner to make disclosures under the Employment Rights Act 1996.

## **12. Employed Learners**

12.1 The Provider shall be responsible for ensuring that Employed Learners, employed by the Provider or a Lead Employer:

- (a) are medically fit to be trained, including any screening, immunisations and vaccinations deemed necessary by programme standards set out by Applicable Laws and Guidance including applicable Department of Health and Social Care guidance;
- (b) once selected, are subjected to all appropriate and customary Disclosure and Barring Service (including enhanced checks, DBS adult first checks and checks of the DBS “barred lists” where appropriate) and occupational health checks; and
- (c) have identified if any reasonable adjustments are required for Employed Learners in undertaking education and training activities and have ensured that those reasonable adjustments have been made prior to that Employed Learner commencing a Placement.

12.2 HEE, through the Region, shall be responsible for commissioning and quality managing the delivery of training and education to those postgraduate medical and dental Learners coming under the responsibilities of the Region as outlined in Schedule 1.

## **13. Non-Employed Learners**

13.1 The Education Provider (or the Education Provider in partnership with the Placement Provider) shall ensure that they select Non-Employed Learners for training in accordance with the rules and standards as laid down by the relevant Regulator and relevant national policies (including but not limited to the NHS Employment Check Standards and counter fraud measures). This is to ensure that, prior to commencement of the appropriate Programme(s), Non-Employed Learners shall:

- (a) possess at least the minimum entry requirements for the appropriate Programme(s) as required by the appropriate Regulator and the specific rules

and standards of the Education Provider and that all education qualifications are checked and verified;

- (b) be recruited in line with the NHS values as set out in the NHS constitution and within the requirements of Values Based Recruitment which can be found on the HEE webpage (as may be updated or superseded from time to time);
- (c) have their references checked for accuracy and veracity;
- (d) be subjected to occupational health screening and safeguarding screening;
- (e) be subject to identity checks to a standard at least in accordance with Border Force guidance (and shall refuse to permit any individual who fails such checks to become a Non-Employed Learner);
- (f) comply with the requirements of the Border Force in relation to immigration control;
- (g) be subject to appropriate checks to confirm their eligibility to be accepted onto relevant Programmes in line with any relevant nationally recognised eligibility criteria where appropriate. HEE reserves the right to have access to evidence of Non-Employed Learner eligibility and identity as may be required;
- (h) promptly provide original documentation as evidence to support the checks undertaken pursuant to this clause and provide all relevant documentation to the Provider throughout their training;
- (i) have a completed and satisfactory Enhanced DBS & Barred List Check;
- (j) have completed an appropriate risk assessment by the Provider; and
- (k) have all relevant immunisations and vaccinations required in order to be able to undertake duties in accordance with their training.

13.2 The Placement Provider shall recognise HEE's requirements of the Education Provider regarding the Disclosure and Barring Service and occupational health checks and shall not seek additional checks unless deemed reasonable, necessary and proportionate in the circumstances by the Placement Provider and which are communicated to the Education Provider in advance.

## **14. All Learners**

14.1 [Not applicable]

14.2 The Provider shall be responsible for ensuring all Learners have an appropriate induction into the organisation to meet its obligations as an employer. The Provider is committed to ensuring all new Staff including substantive, temporary or Learners are properly inducted into the organisation, the NHS Constitution

and their department and their job. The process of induction is unequivocally linked to the Provider's values, and is a key part of patient safety. Induction should include health and safety requirements, risk assessments, and appropriate inductions to the place of work, rather than just corporate induction. Induction is aimed to create a framework in which all Staff and Learners, whether temporary or permanent, are effectively and appropriately introduced to the Provider's culture, environment and ways of working. The Provider shall continuously monitor the induction process to ensure the aims of the induction policy are met, and provide to HEE in a timely manner (if requested) logs of Learner inductions.

- 14.3 The Provider shall ensure that all relevant checks have been carried out in respect of Learners (whether by the Learner's employer or an Education Provider), either in line with a Placement Agreement or as contained within the TPA.
- 14.4 The Provider must ensure that appropriate processes are in place to ensure Learners self- disclose any relevant information at regular intervals throughout training. The costs of any additional Disclosure and Barring Service and occupational health checks required by the Placement Provider shall be the responsibility of the Placement Provider. The Placement Provider shall ensure that any such requirements for additional checks does not materially delay or inhibit the terms of this contract.
- 14.5 The Provider must ensure that appropriate risk assessment processes are in place to ensure the protection, safety, and health and well-being of Learners and Service Users, and to ensure that all tasks undertaken by Learners are suitable and that appropriate equipment is provided.
- 14.6 Placement Providers must ensure that appropriate disposable personal protective equipment, in accordance with a risk assessment and which meets the same standards used for Staff, are available for Learners where required during their Placement on a Programme. Placement Providers have the responsibility for this under health and safety requirements, therefore are not permitted to request funding from HEE or the Education Provider for the provision of disposable personal protective equipment. Uniforms and clothing for Placements are to be negotiated in partnership with the Placement Provider and the Education Provider and included within a TPA. For the avoidance of doubt, HEE is not responsible for the funding or provision of uniforms and/or clothing for Placements.
- 14.7 Education Providers must ensure that appropriate disposable personal protective equipment, in accordance with a risk assessment, are available for

Learners where required during on-campus learning or where the Education Provider offers its own placements. Education Providers have the responsibility for this in their Premises under health and safety requirements. For the avoidance of doubt, HEE and/or the Placement Provider are not responsible for the funding or provision of appropriate disposable personal protective equipment to Education Providers.

## **15. Premises and facilities**

- 15.1 The Provider shall make available appropriate access to Premises and facilities to support Learners, undertaking any education/training pursuant to this contract, for bathroom facilities whilst undertaking education and training activity, and shall ensure access to appropriate clinical and non-clinical Learning Environments to allow Learners to complete their learning objectives including reasonable and appropriate access to facilities outside normal working hours for appropriate activities.
- 15.2 The Provider shall ensure that Learners undertaking any education and training have the same work and learning facilities and amenities as those available to its employees and/or its Employed Learners.
- 15.3 The Provider shall ensure that staff of Education Providers involved in the supervision, education and assessment of Learners undertaking any education/training at the Provider shall have access to all Programme settings and Learning Environments.
- 15.4 [Not applicable]
- 15.5 The Provider shall undertake an assessment of the procedures in place for the use of equipment and activities to ensure that the requirements of Learners is met.
- 15.6 The Provider shall ensure that Learners receive any necessary training to enable them to use any equipment and to undertake activities safely.
- 15.7 The Provider shall consult with HEE, and where relevant their partner provider, on any significant changes to the use of Premises or activities which would impact upon the educational environment, affect the Learners' ability to meet the specified learning outcomes or in advance of the termination of the use of Premises or other facilities.
- 15.8 The Provider shall give HEE a minimum of 15 Business Days within which to express its views on any changes proposed in accordance with clause 15.7.

HEE reserves the right to assess the impact of these changes upon the educational environment (taking into account the views of the Provider) and shall make a determination as a result acting reasonably at all times, but shall consider the impact of such proposed change on the Provider's compliance with the HEE Quality Framework, and where necessary will consult with the appropriate Regulator.

15.9 The Provider shall provide and maintain in a safe condition all equipment and facilities required for the provision of the Services.

15.10 The Provider shall ensure that all Premises, Learning Environments, facilities and equipment:

- (a) are suitable for the performance of the Services;
- (b) are accessible, safe, and secure;
- (c) comply with any applicable Health and Safety Legislation, any other Applicable Law, Guidance, appropriate risk management clinical guidance, good healthcare practice and the requirements of any relevant Regulator; and
- (d) are sufficient to enable the Services to be provided at all times and, in all respects, in accordance with this contract.

15.11 [Not applicable]

15.12 [Not applicable]

15.13 [Not applicable]

## **16. Funding**

16.1 In consideration of the provision of the Services by the Provider, HEE shall pay the Funding to the Provider directly according to the scheme set out in Schedule 2, subject to the terms and conditions of this contract.

16.2 The Provider acknowledges that its receipt of the Funding is conditional on its compliance with the terms and conditions of this contract.

16.3 Where conditions are set out in Schedule 2 linking payments of Funding monies to specific activities or elements of the Services, or to the achievement of specific KPIs as set out in Schedule 3, no payment shall be made unless HEE is satisfied (acting reasonably) that those amounts are being allocated to the relevant activities or elements have been achieved.

- 16.4 HEE has the right to alter the Funding allocation to the Provider should the predicted or forecast numbers of Learners not be fulfilled to meet the requirements set out in Schedule 1.
- 16.5 HEE has the right to recover any difference in Funding to correspond with actual Learners, Placements, or unfilled Placements.
- 16.6 HEE requires the Provider to ensure financial transparency on the use of the Funding, and that the Funding is assigned to education and training, and not any other services. An itemised financial report of any and all Funding provided by HEE must be made available to HEE within 5 Business Days from HEE's request, from any authorised person or senior member of HEE.
- 16.7 HEE requires the Provider to comply with all quality stipulations in accordance with the HEE Quality Framework in order to be eligible to receive the Funding, and where appropriate, and at HEE's discretion, HEE shall support the Provider in meeting the Quality and Performance Requirements set out in Schedule 3.
- 16.8 HEE can reject any requests for additional Funding on grounds of affordability.
- 16.9 HEE can increase or decrease the placements or Learners at its discretion (and shall adjust the Funding accordingly) in accordance with the mechanism set out in Schedule 2.
- 16.10 HEE will ensure that the Funding provided in accordance with this contract is provided to the Provider at the earliest opportunity in accordance with the timescales set out in Schedule 2.
- 16.11 HEE will not fund consecutive training or salary support for Learners on different Programmes without a minimum of twelve (12) months employment in the NHS for the previously funded position unless this is part of a profession pathway development agreed in writing by HEE. Exceptional circumstances must be agreed by a National Director or Regional Director. This does not include placement tariff funding or workforce development funding which is agreed with HEE before education and training commences.
- 16.12 Providers should comply with clause 16.11 for their recruitment activities.
- 16.13 A condition of Funding is that HEE has direct access to Learners via email for the purposes of assuring the HEE Quality Framework and for Learners to undertake the National Education and Training Survey (NETS) from HEE. The National Education and Training Survey (NETS) is the only national survey open to all Learners across all clinical learning environments. The survey gathers

opinions from students about their time in clinical placements, asking them to provide feedback on what worked well and what they think could be improved.

## **17. Repayment or recovery of the Funding**

17.1 HEE may at its absolute discretion withhold, suspend, or require the Provider to repay, all or part of the Funding if found proven following an investigation by HEE of any of the following:

- (a) information disclosed by the Provider to HEE is materially inaccurate or misleading;
- (b) HEE reasonably considers that delivery of the Services falls short of the standards required under this contract including in respect of the HEE Quality Framework;
- (c) the Provider (or any of its Staff) acts dishonestly or negligently in connection with the Services or breaches any of its or their legal obligations in a way that could lead to reputational damage for HEE or the NHS;
- (d) the Provider (or any of its Staff) commits a Prohibited Act;
- (e) where the Provider receives duplicate Funding for the Services, either identified by the Provider or HEE (in which case, HEE's recovery shall be limited to a part of the Funding equivalent to the amount of duplicate Funding);
- (f) the Provider applies any of the Funding in a manner not permitted under this contract;
- (g) the Provider becomes unable, for any reason, to continue the Services substantially on the terms of Schedule 1, or HEE reasonably considers that this shall be the case;
- (h) the Provider is subject to adverse findings, warning notices, interventions or other action from any Regulator;
- (i) the Provider fails to commence, progress or complete the Services substantially in accordance with any timescales contained in Schedule 1;
- (j) the Provider is subject to an Insolvency Event or loses any Regulator's consent as necessary for the Services;
- (k) where the Provider is an NHS Trust or NHS Foundation Trust, the Provider is or becomes subject to an order made under section 65B or 65D of the NHS Act 2006;
- (l) if any of the scenarios in clause 26 occur (subject to the maximum percentage of the Actual Monthly Value as set out in clause 26); or

- (m) any non-compliance with any of the obligations contained in this contract, and in particular clause **Error! Reference source not found.**

17.2 Where HEE requires repayment of any part of the Funding under this clause 17, the Provider must repay that amount in full within 20 Business Days of receipt of HEE's invoice requiring repayment.

17.3 HEE's rights of withholding or recovery under this clause 17 are in addition to any other rights or remedies it may have.

## **18. Pre-training Checks**

18.1 Subject to clause 18.3, before the Provider engages or employs any Staff in the provision of the Services, or in any activity related to or connected with, the provision of Services, or any Learner commences a Programme, the Provider must, and must ensure that any Sub-Contractor shall, at its own cost, comply with:

- (a) NHS Employment Check Standards; and
- (b) other checks as required by the DBS or which are to be undertaken in accordance with current and future national guidelines and policies.

18.2 The Provider shall share the results of the checks referred to in clause 18.1 with the relevant HEI (where applicable) and shall escalate any issues immediately with HEE.

18.3 Where the Provider is an Education Provider, before the Education Provider or any Sub-Contractor engages or employs any Staff in the provision of the Services, or in any activity related to or connected with, the provision of Services, or any Learner commences a Programme, the Provider must (and must ensure that any Sub-Contractor shall) at its own cost, comply with any checks as required by HEE.

18.4 The Education Provider shall share the results of the checks referred to in clause 18.3 with HEE and shall escalate any issues immediately with HEE.

18.5 The Provider or any Sub-Contractor may engage a person in an Enhanced DBS Position or a Standard DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of HEE and subject to any additional requirement of HEE for that engagement.



## **19. Mandatory Training**

- 19.1 In accordance with the terms of a relevant TPA, Placement Providers shall work in partnership to agree and ensure Education Providers deliver appropriate and relevant mandatory training as agreed between the Placement Provider and the Education Provider, to Non-Employed Learners prior to the first Placement or Programme. This should be appropriate to deliver Non-Employed Learner and Service User safety. Should the Placement Provider require any additional mandatory training this shall be the responsibility of the Placement Provider and the costs of any additional training required by the Placement Provider, shall be the responsibility of the Placement Provider. The Placement Provider shall ensure that any such requirement for additional training does not materially delay or inhibit Non-Employed Learner progress.
- 19.2 Mandatory training for Employed Learners by the Placement Provider is the responsibility of the Placement Provider, unless agreed as part of a Programme with the Education Provider or where there is a Lead Employer in which case the Lead Employer will be responsible for mandatory training.
- 19.3 Mandatory training for Learners hosted by the Education Provider or for whom is classified as a Lead Employer, is the responsibility of the Education Provider.
- 19.4 The Placement Provider is responsible for ensuring that all Learners are aware of their individual obligations to comply with the policies of the Placement Provider in relation to health and safety, complaints and raising concerns as required by employees of the Placement Provider.
- 19.5 [Not applicable]
- 19.6 [Not applicable]
- 19.7 HEE will provide free access to E-Learning for health for all Staff and Learners. Providers are expected to promote and engage with E-Learning for health to all Staff and Learners.
- 19.8 The Placement Provider must record all mandatory training and make this transferable to all other NHS providers should a Learner or Staff member transfer to another provider.
- 19.9 In the event that a Learner transfers in accordance with clause 19.8, the Provider must accept existing records of mandatory training and not insist on repeating such mandatory training for Learners or Staff unless the time period for keeping such records has lapsed.

## **20. Exchange of Information between HEE and Provider**

- 20.1 Providers are expected to share information relating to all education and training activities with other providers as necessary for the ongoing continuation of Programmes.

## **21. Equality and Diversity**

- 21.1 The Provider shall perform its obligations under this contract (including those in relation to the Quality and Performance Requirements) in accordance with:
- (a) the Equality Act 2010 and any other equality Applicable Law and/or Guidance (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation);
  - (b) the Provider's equality and diversity policy which must be consistent with HEE's equality and diversity policy available on the HEE website;
  - (c) any other requirements and instructions which HEE reasonably imposes in connection with any equality obligations imposed on HEE at any time under equality Applicable Law and/or Guidance; and
  - (d) take all necessary steps, and inform HEE of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 21.2 The Provider shall (and shall use its reasonable endeavours to procure that its Staff shall) at all times comply with the provisions of the HRA in the performance of the contract.
- 21.3 The Provider shall undertake, or refrain from undertaking, such acts as HEE requests so as to enable HEE to comply with its obligations under the HRA.
- 21.4 [Not applicable]
- 21.5 The Provider and HEE will work in partnership to address any equality, diversity and inclusivity matters relating to education and training.

## **22. Unlawful discrimination**

- 22.1 The Provider shall ensure that in carrying out its obligations under this contract, it shall comply, and it shall procure that all employees or agents of the Provider and all Sub-contractors connected with the provision of the Services comply with the provisions of the Equality Act 2010 or any statutory modification or amendment made thereto from time to time or of any similar legislation which

has been, or may be, enacted from time to time relating to discrimination in employment or discrimination in the delivery of public services.

22.2 The Provider shall ensure that it collects data, and shares this with HEE, in relation to all protected characteristics at each stage of a Learner's Programme, including but not limited to application, education and training, graduation and employment and demonstrate to HEE the comparison with the local demographic of the population in which the Provider serves.

22.3 Providers shall have due regard to the general public sector equality duty under section 149 of the Equality Act 2010.

22.4 The Provider shall at all times ensure that all Learners who are placed with them pursuant to this contract and such other individuals who are placed on placement with the Provider by other bodies (not being HEE), are treated equally, fairly and without discrimination, irrespective of whether such Learners are commissioned and /or funded by HEE or not.

## **23. Safeguarding**

23.1 The Provider shall at all times:

- (a) ensure that all Staff and Learners are subject to a valid enhanced disclosure check for regulated activity undertaken through DBS;
- (b) monitor the level and validity of the checks under this clause 23 for Staff; and
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would present a risk to individuals.

23.2 The Provider warrants that it has no reason to believe that any Staff or Learners are barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made under it, as amended from time to time.

23.3 The Provider must immediately provide to HEE any relevant information reasonably requested by HEE to enable HEE to be satisfied that the obligations of this clause 23 have been met.

23.4 The Provider must refer to the DBS information about any person in respect of whom it declines or withdraws permission to be involved in the Services (or would have done so, if that person had not otherwise ceased to be involved) because, in its opinion, that person has harmed or poses a risk of harm to Service Users.

23.5 The Provider must comply with all Applicable Law and Guidance in relation to the safeguarding of children and adults.

23.6 The Provider should notify HEE, the Education Provider and/or the Placement Provider if any safeguarding issue is raised against a recipient of HEE funded education and training and/or results in suspension or exclusion from a Programme for a temporary or permanent period of time.

## **24. Authorised representatives**

24.1 HEE's Representative and main point of contact for this contract shall be such person as is notified by HEE to the Provider from time to time. HEE shall keep the Provider notified of the identity of HEE's Representative.

24.2 The Provider shall identify a suitably qualified and senior employee of the Provider to be the Provider's Representative. The Provider's Representative shall be a person as is notified by the Provider to HEE from time to time. The Provider's Representative shall be employed by the Provider in connection with the provision of the Services. The Provider's Representative shall be the formal point of contact between the Provider and HEE.

24.3 Each of the Provider and HEE shall nominate a contract management team(s) and shall procure that the members of such a contract management team(s) participate in review meetings relevant to their area of expertise.

## **25. Quality and Performance Requirements**

25.1 The Provider shall provide the Services, and meet and fully comply with the Quality and Performance Requirements in accordance with Schedule 3 and the HEE Quality Framework.

## **26. Contract Management**

26.1 If the Parties have agreed a consequence in relation to the Provider failing to meet a Quality Requirement and the Provider fails to meet the Quality Requirement, HEE shall be entitled to exercise the agreed consequence immediately and without issuing a Contract Performance Notice, irrespective of any other rights HEE may have under this clause 26.

26.2 The provisions of this clause 26 do not affect any other rights and obligations the Parties may have under this Contract.

26.3 [Not applicable]

## **Contract Performance Notice**

26.4 If HEE believes that the Provider has failed or is failing to comply with any obligation on its part under this contract it may issue a Contract Performance Notice to the Provider.

26.5 If the Provider believes that HEE has failed or is failing to comply with any obligation on its part under this Contract it may issue a Contract Performance Notice to HEE.

## **Contract Management Meeting**

26.6 Unless the Contract Performance Notice has been withdrawn, HEE and the Provider must meet to discuss the Contract Performance Notice and any related issues within 10 Business Days following the date of the Contract Performance Notice.

26.7 At the Contract Management Meeting HEE and the Provider must ensure that HEE's Representative and the Provider's Representative are in attendance (including representatives from the quality, finance, and performance and operations department of HEE) and agree either:

- (a) that the Contract Performance Notice is withdrawn; or
- (b) to implement an appropriate Immediate Action Plan and/or Remedial Action Plan.

26.8 If HEE and the Provider cannot agree on either course of action, they must undertake a Joint Investigation.

26.9 [Not applicable]

26.10 [Not applicable]

26.11 [Not applicable]

26.12 [Not applicable]

26.13 [Not applicable]

26.14 [Not applicable]

26.15 [Not applicable]

26.16 [Not applicable]

26.17 [Not applicable]

26.18 [Not applicable]

26.19 [Not applicable]

26.20 [Not applicable]

26.21 [Not applicable]

26.22 [Not applicable]

26.23 [Not applicable]

26.24 [Not applicable]

26.25 [Not applicable]

26.26 [Not applicable]

26.27 [Not applicable]

**27. [Not applicable] Review Meetings**

**28. Decommissioning**

28.1 HEE has the right to decommission Services without prejudice to the Provider on the grounds of quality, reconfiguration or workforce requirement alterations by submitting to the Provider a notice of variation which shall take unilateral effect on the date specified in the variation. This notice will take into account the Healthcare System, Learners and Service needs, with appropriate action to be taken by HEE.

**29. [Not applicable] Intellectual property rights**

**30. Compliance with laws and policies**

30.1 In performing its obligations under this contract, the Provider shall comply with:

- (a) the Applicable Laws;
- (b) Guidance; and
- (c) any guidance or direction issued by the Regulator.

30.2 Changes to the Services required as a result of changes to Applicable Laws or Guidance shall be agreed via the National Variation procedure set out in clause 47.

### **31. Compliance with Working Time Regulations**

31.1 The Provider shall ensure that the hours of work of Learners meet the requirements of the Working Time Regulations 1998 (as amended) and where the maximum weekly limit is exceeded, Learners bringing this to the attention of the Provider shall be given the opportunity to enter into an opt-out agreement. The Provider is expected to support flexible working in line with the NHS 'Improving Working Lives' standard.

31.2 Without prejudice to clause 32, the Parties shall co-operate and assist one another so as to enable them to meet their obligations under the FOIA and the EIRs or any successor legislation.

### **32. FOIA**

32.1 Where a Party receives a request for information (the "**Disclosing Party**") 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.

32.2 Where a Party (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 "**Requested Information**") the Parties shall comply with the procedure set out in clauses 32.2(a) to 32.2(f):

- (a) subject to clause 32.2(d), 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;
- (b) following notification under clause 32.2(a), 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 under

clause 32.2(a) and any representations received after this time shall not be taken into account by the Disclosing Party;

- (c) the Disclosing Party shall reasonably consider any representations and recommendations made by the other Party under clause 32.2(d) 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;
- (d) notwithstanding clause 32.2(a) the Disclosing Party shall not notify the other Party under clause 32.2(a) 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;
- (e) 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
- (f) for the avoidance of doubt references to the Requested Information under this clause 32.2 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.

32.3 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.

### **33. Data protection**

33.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 33 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

33.2 Without prejudice to the generality of clause 33.1, HEE shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Provider for the duration and purposes of this contract.



33.3 Without prejudice to the generality of clause 33.1, the Provider shall, in relation to any personal data processed in connection with the performance by the Provider of its obligations under this contract:

- (a) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by HEE, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (b) without prejudice to clause 34, ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (c) not transfer any personal data outside of the United Kingdom unless the prior written consent of HEE has been obtained and the following conditions are fulfilled:
  - (i) HEE or the Provider has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Provider complies with reasonable instructions notified to it in advance by HEE with respect to the processing of the personal data,
- (d) assist HEE in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
- (e) notify HEE without undue delay on becoming aware of a personal data breach.

33.4 The Provider must obtain the prior written consent of HEE, such consent not to be unreasonably withheld or delayed, prior to appointing an Affiliate or any third party as a processor of Personal Data under this contract.

## **34. Confidentiality**

34.1 Except as this contract otherwise provides, Confidential Information is owned by the disclosing Party and the receiving Party has no right to use it.

34.2 Subject to clause 34.3 and clause 34.4 the receiving Party agrees:

- (a) to use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Contract;
- (b) 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
- (c) 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.

34.3 The receiving Party may disclose the disclosing Party's Confidential Information:

- (a) in connection with any Dispute;
- (b) in connection with any litigation between the Parties;
- (c) to comply with Applicable Laws and Guidance;
- (d) to any appropriate Regulator;
- (e) 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 34.2;
- (f) to NHS Bodies for the purposes of carrying out their duties;
- (g) as permitted under or as may be required to give effect to clause 26;
- (h) as permitted under any other express arrangement or other provision of this contract.

34.4 The obligations in clause 34.1 and clause 34.2 shall not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this contract;
- (b) the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or

- (c) 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.

34.5 Subject to clause 4, the disclosing Party does not warrant the accuracy or completeness of the Confidential Information.

34.6 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 34.

34.7 The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause 34 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 34.

34.8 This clause 34 shall survive the expiry or the termination of this contract for a period of 5 years.

34.9 This clause 34 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

## **35. Insurance**

35.1 Without prejudice to its obligations to HEE under this contract, including its indemnity and liability obligations, the Provider shall for the Term at its own cost take out and maintain, or procure the taking out and maintenance of the insurances as set out in this clause and any other insurances as may be required by Applicable Law and/or Guidance (together the “**Insurances**”).

35.2 During the Term and for a period of six years after the Provider ceases to have any obligations under this contract, the Provider shall maintain in force the following insurance policies with reputable insurance companies:

- (a) public liability insurance with a limit of at least £1,000,000 a claim;
- (b) professional indemnity insurance (which for the avoidance of doubt, shall include cover for any clinical malpractice) with a limit of at least £1,000,000 for claims arising from a single event or series of related events in a single calendar year;
- (c) employer's liability insurance with a limit of at least £1,000,000 for claims arising from a single event or series of related events in a single calendar year; and

- (d) adequate insurance cover for any loss, injury and damage caused by or to any Learners (whilst on the Premises or not) in the course of providing the Services with a limit of at least £1,000,000 for claims arising from a single event or series of related events in a single calendar year.

35.3 The Provider confirms that the insurance taken out in accordance with this clause 35 adequately covers any losses caused by injury or death to persons (including Learners) arising from the Services including as a result of any notifiable infectious diseases as listed under the Health Protection (Notification) Regulations 2010, including, but not limited to, COVID-19.

35.4 During the Term, the Provider shall fulfil all duties relating to the Learners' health, safety and welfare as if it was their employer and shall comply with HEE's reasonable requests in connection with the Provider's duties in relation to the Learners.

35.5 The Provider shall agree with HEE the specific duties and obligations of such persons as regards Learner supervision and patient care as appropriate. For the purposes of this clause 35 and in performing the Services, the Provider agrees to be deemed to be the employer of the Learner whilst undertaking a Programme(s) and not for the purposes of employment law, save where the Learner is an Employed Learner or a secondee employed via a secondment agreement with the Provider.

35.6 At the commencement of this contract and from time to time thereafter at the reasonable request of HEE or the HEE Representative, the Provider shall produce evidence of the insurances obtained and maintained in accordance with this clause 35 to HEE.

## **36. Liability**

36.1 The Provider is responsible for all liability in relation to Learners undertaking activity within the Premises regardless of the Learners' duties on the Premises.

36.2 Where the Provider provides continuing professional and personal development, it shall be liable for any action of all Learners relating to that continuing professional and personal development.

36.3 In performing the Services, the Provider is deemed to be the employer of the Learner whilst undertaking a Programme. This is for the purposes of the appropriate indemnity being provided and not for the purposes of employment law. HEE shall use reasonable endeavours to communicate to the Provider any national agreement, policy, or Guidance issued by Government, parliament or

any Contracting Authority from time to time which may impact on this contract (and/or specifically this clause 36). The Parties agree to comply with any such national agreement, policy or Guidance.

36.4 HEE together with the Provider shall arrange that any employees, servants or agents of HEE who shall work alongside and supervise Learners during a Programme shall be treated as secondees, and contracted accordingly, to the Provider for the purposes of training and instructing Learners and the Provider shall indemnify HEE against any costs, claims or liabilities which may arise from the negligent acts or omissions of those persons save only to the extent caused (or contributed to) by any act or omission or breach of contract by HEE.

36.5 Without prejudice to its liability to HEE for breach of any of its obligations under this contract, the Provider shall be liable for and shall indemnify HEE against any direct liability, loss, damage, costs, expenses, claims or proceedings whatsoever (“**Losses**”) (subject always to an obligation upon HEE to mitigate any Losses to every reasonably practicable extent) incurred by HEE in respect of any claim against HEE, arising under any statute or otherwise in respect of:

- (a) any loss of or damage to property (whether real or personal);
- (b) any injury to any person (including but not limited to Learners), including injury resulting in death; or
- (c) any infectious disease present on the Premises (including but not limited to COVID-19); or
- (d) any Losses of the Provider that result from or arise out of the Provider’s negligence or breach of contract in connection with the performance of this contract except insofar as that loss, damage or injury has been caused by any act or omission by or on the part of, or in accordance with the instructions of, the Provider, any Sub-Contractor, their Staff or agents; or
- (e) any material or non-material damage to any person as a result of infringement of the Data Protection Legislation,

arising directly out of any act or omission or breach of this contract by the Provider (which expression shall in the remainder of this clause include its servants, agents, contractors or any other person who at the request of the Provider is or should be performing or discharging or purporting to perform or discharge one or more of the obligations of the Provider under this contract) save to the extent caused (or contributed to) by any act or omission or breach of contract by HEE.

### **37. Limitation of liability**

37.1 Subject to clause 37.2 and clause 37.4, the limit of the Provider's liability to HEE under or in connection with this contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty percent (120%) of the total Funding paid or payable by HEE to the Provider for the Services for all occurrences or series of occurrences in any year of the Term.

37.2 If the total Funding paid or payable by HEE to the Provider over the Term:

- (a) is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at clause 37.1 shall be replaced with one million pounds (£1,000,000);
- (b) is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at clause 37.1 shall be replaced with three million pounds (£3,000,000);
- (c) is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at clause 37.1 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty percent (120%) at clause 37.1 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- (d) is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at clause 37.1 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty percent (120%) at clause 37.1 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

37.3 Subject to clause 37.4, HEE's total liability to the Provider for any and all claims arising under this contract shall be limited to the total Funding.

37.4 Nothing in this contract shall exclude or limit the liability of either Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited by reason of law.

37.5 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

37.6 HEE has no responsibility for any other costs incurred by the Provider in connection with the Services and/or the Programme(s) to which the Funding relates, and the Provider must indemnify and keep HEE indemnified against any losses, damages, costs, expenses, liabilities, claims, actions, proceedings or other liabilities that result from or arise out of the Provider's acts or omissions in relation to the Services and/or the Programme(s) or its duties to third parties.

## **38. Termination**

38.1 Without affecting any other right or remedy available to it, HEE may terminate this contract or any part of the Services at any time on six 6 months' written notice, but may in its absolute discretion terminate on three 3 months' written notice subject to clause 38.6. HEE will consider the impact on the Provider and the Healthcare System in making the decisions for termination on three 3 months, and share this decision publicly.

38.2 Without affecting any other right or remedy available to it, the Provider may terminate this contract or any part of the Services at any time with the written agreement of HEE and providing twelve 12 months' notice in writing. In partnership with the Provider and at the discretion of HEE this notice period may be reduced where it is reasonable to HEE to do so, provided that twelve 12 months' notice has been provided.

38.3 Without affecting any other right or remedy available to it, either Party may terminate this contract with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of this contract and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
- (b) the other Party repeatedly breaches any of the terms of this contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this contract;
- (c) where the Provider is an NHS Trust or NHS Foundation Trust, the Provider is or becomes subject to an order made under section 65B or 65D of the NHS Act 2006;
- (d) the Provider is in receipt of a quality report from any Regulator which has material adverse implications for the provision of any of the Services, where a Remedial Action Plan has not been agreed and enforced;
- (e) the Provider is subject to an Insolvency Event or otherwise its financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this contract is in jeopardy; and/or

- (f) the Secretary of State for Health and Social Care no longer authorises and/or funds HEE to commission, and manage the provision of Funding in a manner as envisaged by this contract.

38.4 For the purposes of clause 38.3(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (a) a substantial portion of this contract; or
- (b) any number of the obligations set out in the contract,

over the term of this contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

38.5 Without affecting any other right or remedy available to it, the Provider may terminate this contract with immediate effect by giving written notice to HEE if HEE fails to pay any amount due under this contract on the due date for payment and remains in default not less than 40 Business Days after being notified in writing to make such payment.

38.6 If following termination (whether partial or full termination) for any reason under this clause 38 there are any Learners remaining with the Provider, HEE may direct that this contract shall remain in full force and effect in relation to such Learners and such Programmes only until such Programmes have been completed.

38.7 The termination of this contract for whatever reason shall be without prejudice to any rights or liabilities which have accrued prior to the date of termination.

## **39. Obligations on termination and survival**

### **39.1 Obligations on termination or expiry**

On termination or expiry of this contract:

- (a) HEE shall immediately pay to the Provider all of the Provider's outstanding unpaid invoices without interest and, in respect of the Services supplied but for which no invoice has been submitted, the Provider may submit an invoice, which shall be payable immediately on receipt; and
- (b) the Provider and/or HEE shall on request return any of HEE Materials not used up in the provision of the Services.

39.2 Where HEE terminates under clause 38.1, it may not (unless otherwise entitled to do so under clause 17):



- (a) recover any Funding monies already paid to the Provider; or
- (b) withhold any Funding monies otherwise due to be paid to the Provider before the end of the notice period,
- (c) but HEE shall have no liability to pay the Provider any further sums in relation to the Funding.

39.3 Any rights or obligations under this contract which are expressed to survive, or which otherwise by necessary implication survive the expiry or termination for any reason of this contract (including all indemnities and any obligations relating to use of unspent amounts of the Funding) shall continue after expiry or termination.

#### 39.4 **Survival**

- (a) On termination or expiry of this contract, the following clauses shall continue in force: clause 1, clause 29, Clause 35, Clause 38, clause 49, clause 51, clause 62, clause 63, clause 64.
- (b) Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry.

### 40. **[Not applicable] Publicity and NHS Branding**

### 41. **Force majeure**

41.1 **Force Majeure Event** means any circumstance not within a Party's reasonable control including (having regard to Emergency Preparedness, Resilience and Response guidance) without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) nuclear, chemical or biological contamination or sonic boom;
- (d) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to provide a necessary licence or consent;
- (e) collapse of buildings, fire, explosion or accident;
- (f) any labour or trade dispute, strikes, industrial action or lockouts;

- (g) non-performance by Providers or Sub-contractors and interruption or failure of utility service.

41.2 For the avoidance of doubt, a Force Majeure Event does not include an epidemic, pandemic, or other incidents which have been planned under NHS Emergency Preparedness, Resilience and Response requirements. Providers are required to work in partnership to identify these events and to collaborate with HEE to comply with any national guidance issued in these circumstances.

41.3 Provided it has complied with clause 41.5, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

41.4 The corresponding obligations of the other Party shall be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

41.5 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than 5 Business Days from its start], notify HEE in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

41.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the Party not affected by the Force Majeure Event may terminate this contract by giving 4 weeks' written notice to the Affected Party.

41.7 All Regulator, NHS and HEE notices should be adhered to by the Provider in the event of a Force Majeure Event.

**42. [Not applicable] Assignment, sub-contracting, and other dealings**

**43. [Not applicable] Replacement of Sub-Contractors**

**44. Governance, Transaction Records and Audit**

44.1 The Placement Provider must comply with regulation 17 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

44.2 The Provider must comply with all reasonable written requests made by any relevant Regulator (or its authorised representatives), or HEE for entry to the Premises and/or the Learning Environment and/or the premises of any Sub-Contractor for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services.

44.3 Subject to Applicable Law and Guidance, an HEE Representative (or another person who HEE may nominate) may enter the Provider's Premises and/or the Learning Environment and/or the premises of any Sub-Contractor without notice for the purposes of auditing, viewing, observing or inspecting those premises and/or the provision of the Services, and for information relating to the provision of the Services. During those visits, subject to Applicable Law, Guidance, and Good Practice (also taking into consideration the nature of the Services and the effect of the visit on Services Users), the Provider must not restrict access and shall give all reasonable assistance and provide all reasonable facilities.

44.4 Within 10 Business Days following HEE's reasonable request, the Provider must send HEE the results of any audit, evaluation, inspection, investigation or research in relation to the Services, the Learning Environment or services of a similar nature to the Services delivered by the Provider, to which the Provider has access and which it can disclose in accordance with Applicable Law and Guidance.

**45. Suspension**

45.1 If a Suspension Event occurs HEE:

- (a) may by written notice to the Provider require the Provider with immediate effect to suspend the provision of any affected Service, or the provision of any affected Service from any part of the Learning Environment, until the Provider demonstrates to the reasonable satisfaction of HEE that it is able to and shall provide the suspended Service to the required standard; and
- (b) must promptly notify any appropriate Regulator of that suspension.

45.2 If and when HEE is reasonably satisfied that the Provider is able to and shall provide the suspended Service to the required standard, it must by written notice require the Provider to restore the provision of the suspended Service.

45.3 The Provider must continue to comply with any steps that HEE may reasonably specify in order to remedy a Suspension Event, even if the matter has been referred to the dispute resolution procedure at clause 62.

#### **46. Consequence of Suspension**

46.1 During the suspension of any Service under clause 45.1, the Provider shall not be entitled to receive any Funding for the suspended Service except in respect of:

- (a) all or part of the suspended Service the delivery of which took place before the date on which the relevant suspension took effect in accordance with clause 45.1(a); and/or
- (b) all or part of the suspended Service which the Provider continues to deliver during the period of suspension in accordance with the notice served under clause 45.1(a).

46.2 Unless suspension occurs as a result of an Event of Force Majeure, the Provider shall indemnify HEE in respect of any Losses reasonably incurred by them in respect of a suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Service from an alternative provider).

46.3 The Parties must use all reasonable endeavours to minimise any inconvenience to Learners as a result of the suspension of the Service.

46.4 While any Service is suspended HEE must use reasonable efforts to ensure that no further Learners are referred to the Provider for that Service.

46.5 While any Service is suspended the Provider must:

- (a) not accept any further referrals of Learners for that Service;
- (b) at its own cost co-operate fully with HEE and any interim or successor provider of that Service in order to ensure continuity and smooth transfer of the suspended Service and to avoid any inconvenience to Learners, or to or risk to the health and safety of Service Users, including:
  - (i) promptly providing all reasonable assistance and all information necessary to effect an orderly assumption of that Service by any interim or successor provider; and

- (ii) delivering to HEE all materials, papers, documents and operating manuals owned by HEE and used by the Provider in the provision of that Service.

46.6 As part of its compliance with clause 46.5 the Provider may be required by HEE to agree a transition plan with HEE and any interim or successor provider.

## **47. Variation**

### **National Variation**

47.1 HEE may propose changes to the scope or execution of the Services arising from a change in Applicable Laws and Guidance but no proposed changes shall come into effect until a National Variation has been issued by HEE. A National Variation shall be a document setting out the proposed changes and the effect that those changes shall have on:

- (a) the Services;
- (b) the Funding;
- (c) the Quality and Performance Requirements; and
- (d) any of the terms of this contract.

47.2 The Parties acknowledge that any National Variation may be mandated by HEE, in which case the National Variation shall be deemed to have taken effect on the date that HEE mandates the National Variation.

47.3 If the Provider refuses to accept a National Variation, HEE may terminate this contract by giving the Provider not less than 3 months' written notice following the issue of a notice that that National Variation is refused.

### **Variation**

47.4 If the Provider wishes to make a change to the Services:

- (a) it shall notify HEE and provide as much detail as HEE reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) HEE shall, as soon as reasonably practicable after receiving the information at clause 47.4(a), shall present the request to the national governing panel for the NHS Education Contract.
- (c) All decisions made to the NHS Education Contract governing panel shall be applied nationally to all providers either as a National Variation, or as a new edition of the NHS Education Contract.

47.5 If HEE wishes to make a change other than a National Variation, any such change shall be agreed in writing by HEE and the Provider. It is acknowledged that any such agreed changes shall be applied nationally to all providers.

47.6 Each Party shall bear its own costs in relation to compliance with this clause.

47.7 HEE may reject a request for a change from the Provider pursuant to clause 47.4 if, following a request for change, HEE reasonably believes that the proposed change would:

- (a) materially or adversely affect the risks to the health and safety of any person; or
- (b) require the contract to be delivered in a way that infringes any law; or
- (c) would not meet the needs of HEE.

#### **48. Advertisements and marketing**

48.1 Unless otherwise agreed by HEE, no disclosure, announcement, advertisement or publication or any form of marketing or public relations exercise in connection with this contract or the existence of this contract and the Parties to it or them shall be made by or on behalf of a Party to this contract without the approval of HEE in writing. For the avoidance of doubt, the provisions of this clause **Error! Reference source not found.** shall in no way preclude the Provider from advertising, publishing or announcing in any way the details of the healthcare or education services it delivers.

#### **49. Waiver**

49.1 A waiver of any right or remedy under this contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

49.2 A failure or delay by a Party to exercise any right or remedy provided under this contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

49.3 A Party that waives a right or remedy provided under this contract or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

## **50. Rights and remedies**

The rights and remedies provided under this contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## **51. Severance**

51.1 If any provision or part-provision of this contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this contract.

51.2 If any provision or part-provision of this contract is deemed deleted under clause 51.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **52. Entire agreement**

52.1 This contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

52.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this contract.

## **53. Conflict**

If there is an inconsistency between any of the provisions of the main body of this contract and the provisions of the Schedules, the provisions of the main body of this contract shall prevail.

## **54. No partnership or agency**

54.1 Nothing in this contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

54.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **55. Third party rights**

55.1 Unless it expressly states otherwise, this contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract.

55.2 The rights of the Parties to rescind or vary this contract are not subject to the consent of any other person.

## **56. Notices**

56.1 Any notice or other communication given to a Party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified at the beginning of this contract.

56.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

56.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **57. Change in Control**

57.1 The Provider must:

- (a) as soon as possible on, and in any event within 5 Business Days following, a Provider Change in Control; and/or
- (b) immediately on becoming aware of a Material Sub-Contractor Change in Control,

notify HEE of that Change in Control.

57.2 Where there is a Change in Control, the Provider must notify HEE of any intention or proposal to make a consequential change to its operations, which would or



would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this contract.

57.3 If (and subject always to clause 57.2), the Provider does not notify HEE of an intention or proposal to sell or otherwise dispose of any legal or beneficial interest in the Premises as a result of or in connection with the Change in Control then, unless HEE provides its written consent to the relevant action, the Provider must:

- (a) ensure that there is no such sale or other disposal which would or would be likely to have an adverse effect on the Provider's ability to provide the Services in accordance with this contract; and
  - (b) continue providing the Services from the Premises,
- in each case for at least 12 months following the date of that Change in Control Notification.

57.4 The Provider must supply (and must use its reasonable endeavours to procure that the relevant Material Sub-Contractor supplies) to HEE, whatever further information relating to the Change in Control HEE may reasonably request.

57.5 The Provider must use its reasonable endeavours to ensure that the terms of its contract with any Material Sub-Contractor include a provision obliging the Material Sub-Contractor to inform the Provider in writing on, and in any event within 5 Business Days following, a Material Sub-Contractor Change in Control in respect of that Material Sub-Contractor.

57.6 If:

- (a) there is a Material Sub-Contractor Change in Control; and
- (b) following consideration of the information provided to HEE, HEE reasonably concludes that, as a result of that Material Sub-Contractor Change in Control, there is (or is likely to be) an adverse effect on the ability of the Provider and/or the Material Sub-Contractor to provide Services in accordance with this contract (and, in reaching that conclusion, HEE may consider any factor, in its absolute discretion, that it considers relevant to the provision of Services),

then:

- (c) HEE may, by serving a written notice upon the Provider, require the Provider to replace the relevant Material Sub-Contractor within 10 Business Days (or other period reasonably specified by HEE taking into account the interests of Service Users and the need for the continuity of Services); and

- (d) the Provider must replace the relevant Material Sub-Contractor within the period specified under clause 43.1.

57.7 Nothing in this clause 57 shall prevent or restrict the Provider from discussing with HEE a proposed Change in Control before it occurs. In those circumstances, all and any information provided to or received by HEE in relation to that proposed Change in Control shall be Confidential Information.

57.8 Subject to Applicable Law and Guidance and to the extent reasonable the Parties must co-operate in any public announcements arising out of a Change in Control.

## **58. Prohibited Acts**

58.1 The Provider must not commit any Prohibited Act.

58.2 If the Provider or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act in relation to this contract with or without the knowledge of HEE, HEE shall be entitled:

- (a) to exercise its right to terminate under clause 38 and to recover from the Provider the amount of any loss resulting from the termination; and
- (b) to recover from the Provider the amount or value of any gift, consideration or commission concerned; and
- (c) to recover from the Provider any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

## **59. Conflicts of Interest**

59.1 If a Party becomes aware of any actual, potential or perceived conflict of interest which is likely to affect another Party's decision (that Party acting reasonably) whether or not to contract or continue to contract substantially on the terms of this contract, the Party aware of the conflict must immediately declare it to the other. The other Party may then, without affecting any other right it may have under Applicable Law and Guidance, take whatever action under this contract as it deems necessary.

59.2 The Provider must and must ensure that, in delivering the Services, all Staff comply with Applicable Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

## **60. Counterparts**

60.1 This contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

60.2 Transmission of an executed counterpart of this contract (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this contract. If this method of transmission is adopted, without prejudice to the validity of the contract thus made, each Party shall on request provide the other with the "wet-ink" hard copy original of their counterpart.

60.3 No counterpart shall be effective until each Party has executed at least one counterpart.

## **61. Costs and Expenses**

61.1 Each Party is responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this contract.

## **62. Multi-tiered dispute resolution procedure**

62.1 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 contract, the Parties shall follow the procedure set out in this clause:

- (a) 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 HEE Representative and the Provider Representative shall attempt in good faith to resolve the Dispute;
- (b) if the HEE 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 Regional Director of HEE and a senior director of the Provider who shall attempt in good faith to resolve it; and

62.2 [Not applicable]

62.3 [Not applicable]

**63. Governing law**

This contract 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.

**64. 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 this contract or its subject matter or formation.

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

**Schedule 1 Provider Services**

**Schedule 2 Funding**

**Schedule 3 Quality and Performance**

**Schedule 4 Placement Agreement**

**Schedule 5 Processing, Personal Data and Data Subjects** [Not applicable]

**Schedule 6 Model Data Sharing Agreement** [Not applicable]

## SCHEDULE ONE – SERVICES

The Services outlined below are to inform the Provider of their obligations in relation to the NHS Education Contract.

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## 1 MANAGER OF SERVICES

1.1 The nominated contract manager from HEE shall be [REDACTED]

1.2 The nominated contract manager from the Provider shall be [REDACTED]

1.3 The name of the Provider's board member responsible shall be [REDACTED]

## **2 INTRODUCTION**

- 2.1 Education Providers are required to ensure suitable Placement opportunities are available for Learners. Accordingly, they shall work collaboratively with Placement Providers to agree Placements and shall enter into a Placement Agreement with the Placement Provider, as identified in Schedule 4 -Tri-Partite Agreements.
- 2.2 Where the Placement Provider receives Learners from more than one Education Provider, they shall enter into separate Placement Agreements with each Education Provider. In the same way, each Education Provider shall enter into a separate Placement Agreement with each Placement Provider that receives their Learners.
- 2.3 The Placement Provider shall, in consultation with the relevant Education Providers, use reasonable endeavours to provide sufficient Placements to support the agreed numbers of Learners. Confirmation of the numbers that each Placement provider can support shall be in a form reviewed and agreed from time to time between the Placement Provider, Education Providers and HEE.

## **3 PRE-REGISTRATION CLINICAL PLACEMENTS (CLINICAL)**

- 3.1 The Department of Health and Social Care has an education and training tariff for clinical placements, identified in the tariff as clinical placements, and is shown in Schedule 2 – Funding.
- 3.2 The intended purpose of the tariffs is to support education, improve the quality of Placement provision and all Placement Providers will be expected to meet the HEE Quality Framework in Schedule 3.

## **4 MILESTONES [NOT APPLICABLE]**

## **5 FACILITATION AND ASSESSMENT OF PRACTICE LEARNING - ALL LEARNERS**

- 5.1 Placement Providers should make available suitable Staff to participate in the moderation of the Placement assessments where requested by the Education Provider subject to reasonable advance notice periods.
- 5.2 Placement Providers should ensure that all Learners have access to appropriately qualified and up to date educators/supervisors in line with professional body and Education Provider requirements who can provide an appropriate level of support, supervision and assessment of competency.
- 5.3 Ensure that Learners have access to the HEE National Education and Training Survey (NETS) and encourage and facilitate completion of the survey.

- 5.4 Education Provider Staff who are involved in the facilitation and support of Learners shall be enabled to access said Learners in Placements subject to reasonable notice by the Education Provider.
- 5.5 Where service provision changes affect the Learners' ability to meet the relevant learning outcomes the Education Provider and HEE shall be notified immediately and all Parties shall work collaboratively to offer the Learner a suitable alternative Placement.
- 5.6 Education Providers are expected to work in collaboration with Placement Providers to ensure Placements are audited and maintain the standards contained within Schedule 3, and the HEE Quality Framework.
- 5.7 Where appropriate, Placement Staff shall be encouraged to participate in any disciplinary and appeals process relating to a Placement Learner at the invitation of the relevant Education Provider.
- 5.8 The Placement Provider shall remove a Placement Learner from a Placement in any case where the Placement Provider reasonably considers it necessary, having regard to the Placement Learner's conduct and/or professional suitability. The decision to remove a Placement Learner from a Placement shall only be made by appropriate senior members of Staff (of a level of seniority to be agreed between the relevant Education Provider and the Placement Provider from time to time) and, wherever possible, shall only be made following consultation between the relevant Education Provider, Placement Provider and HEE.
- 5.9 Placement Providers shall work collaboratively with the relevant Education Provider(s) in answering any Service User complaint or defending any clinical negligence or personal injury claim involving a Placement Learner in a Placement setting.

## **6 CLINICAL SALARY SUPPORT**

- 6.1 This paragraph sets out the terms on which the Placement Provider receives Funding from HEE to support Staff who are absent either full time or part time due to undertaking an approved and agreed Education/Training Programme, which is eligible for clinical salary support Funding.
- 6.2 HEE shall invite the Placement Provider to submit their demand and/or capacity for places on courses eligible for salary support on one of the education/training Programmes identified by HEE. Providers should notify HEE should they not be able to fulfil the demand submitted.
- 6.3 In deciding how the Funding to be made available for salary support will be allocated, HEE will take in to consideration factors including (but not limited to): national and local priorities; the level of Funding available; the Programmes; value for money; and Staff groups to be supported.



- 6.4 HEE will continue to meet all previous commitments made towards the salaries of existing Staff that have already commenced as Learners on Programmes, providing salary support Funding at the agreed rates through to the agreed completion date of their Programme.
- 6.5 The Funding from HEE represents a contribution towards the salary of the relevant Staff members and may therefore not cover all costs.
- 6.6 The Placement Provider shall only be entitled to use Funding made available by HEE for salary support pursuant, to this Schedule for supporting the salary of its Staff members and Employed Learners, who satisfy all of the following requirements:
  - 6.6.1 meet the minimum selection criteria laid down by the Education Provider;
  - 6.6.2 meet the minimum employment criteria laid down by the employing Placement Provider;
  - 6.6.3 are not subject to any restrictions in their length of stay in the UK;
  - 6.6.4 Have not been in receipt of HEE Funding for the previous two years, unless agreed by HEE in advance.
- 6.7 Eligible Programmes for new Learners shall be outlined in the annual demand scoping exercise conducted by HEE, with relevant information sent to Providers as necessary.
- 6.8 The amount of Funding to be made available to the Placement Provider during the Term in relation to salary support is set out in the salary support demand arrangements letter issued by HEE prior to the financial year.
- 6.9 The Funding provided by HEE will be in respect of individual, named Staff members for the normal duration of the Programme to be undertaken by the relevant Staff member of the Placement Provider. If for whatever reason, the Programme is not completed within the timeframe set for the relevant Programme, HEE shall not be obliged to provide further funds unless HEE confirms that it will in writing. HEE may, for example, allow extension to such Funding where mitigating circumstances (e.g. sickness) are provided. All circumstances will be subject to HEE's discretion.
- 6.10 The Placement Provider shall ensure that the arrangements for Staff who are undertaking Programmes pursuant to this Schedule are appropriate to enable Staff to fully engage in the Programme and to meet the learning outcomes.
- 6.11 The Placement Provider shall submit monitoring data to HEE to ensure that the Placement Provider is complying with the terms of this contract and that HEE is receiving value for money. Where applicable this is will be completed via the

Student Data Collection and the minimum information that shall be required to be submitted to HEE will consist of, but shall not be limited to, the following:

- 6.11.1 the name of each of the relevant Staff members for whom salary support is provided by HEE pursuant to this contract;
  - 6.11.2 the name of each of the Education Providers at which the relevant education/training is taking place;
  - 6.11.3 the name of each of the education/training Programmes being undertaken by the relevant Staff members;
  - 6.11.4 when the Staff member or Employed Learner started the relevant education/training and when they are due to complete;
  - 6.11.5 dates of any intermissions or early terminations to the education/training, and reason for intermissions or early terminations; and
  - 6.11.6 the attainment record for persons attending the Programmes (i.e. pass/fail/deferred and their post education/training destination [i.e. employer/position])
  - 6.11.7 HEE may also from time to time request additional reporting as is reasonable to ensure the provision of salary support.
- 6.12 The Placement Provider will nominate an individual from within its organisation as a salary support lead (“Placement Provider Salary Support Lead”) who will coordinate activities relating to the Funding in relation to salary support. The Placement Provider will inform HEE of the identity and details of the Placement Provider Salary Support Lead and shall keep HEE updated of any changes.
- 6.13 HEE contract manager shall discuss and agree appropriate action where the Placement Provider is receiving funds under this Schedule in circumstances where the Staff member or Employed Learner to which the Funding relates ceases to satisfy the criteria set out in this Schedule, or fails to attend the relevant Programmes which HEE is Funding pursuant to this contract. The Placement Provider shall take any appropriate action as HEE shall request from time to time.

## **7 FINANCE AND PAYROLL SERVICES**

- 7.1 This paragraph outlines where HEE funds Placement Providers’ salaries to the Employed Learners that are eligible for salary support as per Schedule 2 based on the following, any profession specific variations are listed below:
- 7.1.1 The agreed commencement date for new Employed Learners recruited to the training Programme will be as notified by HEE in a separate letter and will complete on the date specified in the same letter, unless training has been extended with contract from “HEE”.

- 7.1.2 London weighting is applied at the rate relevant to the address of the organisation providing the placement that is the Employed Learner's main working Premises.
  - 7.1.3 Contracts of employment are fixed term and employment ceases at the end of the clinical Placement.
  - 7.1.4 On costs are applied as appropriate and dependent on the salary support offer.
- 7.2 HEE will provide financial support for the Employed Learner salary for the duration of the training Programme either as Full Time or Part Time. In year changes to FTE will be granted on an exceptional basis and require prior notification and approval from HEE.
- 7.3 Additional salary support may be provided when a period of extension has been granted by the education provider in conjunction with HEE. The only exception leading to longer (HEE funded) periods of salary support would be for agreed extensions due to maternity, sickness or other exceptional circumstances which could not be anticipated when the Employed Learner was recruited.
- 7.4 Employed Learners are expected to self-fund their training beyond the funded period plus any agreed extensions.
- 7.5 Salary support is suspended when a person is on maternity or sick leave, these costs should be funded by the employer in accordance with the NHS Terms and Conditions of Service. Salary support will be reinstated on agreement of continuing the Programme.
- 7.6 To be eligible for salary support all Employed Learners must be able to satisfy all the following requirements:
  - 7.6.1 meet the minimum selection criteria laid down by the Education Provider
  - 7.6.2 meet the minimum employment criteria laid down by the employing Trust
  - 7.6.3 have no restrictions in their length of stay in the UK
- 7.7 Pay Employed Learners excess travel expenses based on the following, with the exception of Education & Mental Health Practitioners:
  - 7.7.1 In accordance with NHS Terms and Conditions of Service.
  - 7.7.2 Local HR rules applying to the Employed Learner's place of employment and current tax regulations will apply to excess travel claims submitted by the Employed Learner. Excess travel should be kept at a minimum and will be reviewed annually with the Employed Learner.

- 7.8 Receipts must be provided by the Employed Learner to support any claim for expenses.
- 7.9 All claims for travel expenses should be counter signed by the Employed Learner's supervisor/line manager and comply with the employing organisation's travel expenses policy (i.e. submitted on the correct form stating destination, purpose of travel and using the appropriate Agenda for Change rates in line with NHS terms and conditions / class of travel).
- 7.10 Trusts will be responsible for checking and validating travel claims and analysis claims and should note that the cost of parking, books, subscriptions to journals and associations, conference and study-day fees will not be met by HEE. This does not affect the Trust's own capacity to further assist the Employed Learner, for example, with the cost of books or to attend conferences.
- 7.11 Claims for excess travel will be paid for as long as the Employed Learner qualifies for salary support; periods of maternity leave or sickness are excluded.
- 7.12 Claims for travel should be settled by the employing organisation and recharged to HEE, with backing documentation.
- 8 **WORKFORCE MANAGEMENT PLANNING [NOT APPLICABLE]**
- 9 **UNDERGRADUATE MEDICAL EDUCATION [NOT APPLICABLE]**
- 10 **UNDERGRADUATE DENTAL EDUCATION [NOT APPLICABLE]**
- 11 **POSTGRADUATE MEDICAL AND DENTAL PLACEMENTS [NOT APPLICABLE]**
- 12 **WORKFORCE DEVELOPMENT (WD) FUNDING [NOT APPLICABLE]**
- 13 **APPRENTICESHIPS**
- 13.1 The Provider shall be required to comply with any monitoring requirements specified by HEE or Government.
- 13.2 The Provider should make HEE aware of any Regulator outcomes that would impact on the continuation of apprenticeship programme and learners; where such outcomes would impact funding specific to HEE programme grants or funding.
- 14 **LIBRARY AND KNOWLEDGE SERVICES [NOT APPLICABLE]**
- 15 **ADDITIONS TO SERVICES**
- 15.1 Any non-recurrent Funding that may be agreed between parties and provided to Providers for particular education and training projects or initiatives that contribute

to and promote improvements in Service User care through better education and training.

15.2 The required outcomes and deliverables of these projects and initiatives will be detailed and managed through local agreements and letters of agreements as an addition to this Schedule as part of this contract.

15.3 Funding will be made available for these activities as detailed in the agreement letter, as an addition to this Schedule, within the usual timeframes of Funding.

**16 EDUCATION SUPPORT [NOT APPLICABLE]**

**17 VARIATION AND CHANGE CONTROL**

17.1 HEE and the Provider may agree to vary this Schedule as appropriate to the needs of healthcare education and training. This can be completed as per Annex 1.

## ANNEX 1

### CHANGE CONTROL NOTICE NUMBER:

|                                                                |                          |
|----------------------------------------------------------------|--------------------------|
| <b>Title of Change</b>                                         |                          |
| <b>Change Control Notice (CCN to the following agreement):</b> |                          |
| <b>Agreement name</b>                                          | <b>Date of Agreement</b> |

|                              |                        |                           |
|------------------------------|------------------------|---------------------------|
|                              |                        |                           |
| <b>Date Change Requested</b> | <b>Date CCN Raised</b> | <b>Expiry date of CCN</b> |
|                              |                        |                           |

|                                                                       |                                                                       |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------|
| <b>Contact Information for the proposed change</b>                    |                                                                       |
| <b>Originator</b>                                                     | <b>Other Parties</b>                                                  |
| <b>Name:</b><br><b>Company:</b><br><b>Telephone:</b><br><b>Email:</b> | <b>Name:</b><br><b>Company:</b><br><b>Telephone:</b><br><b>Email:</b> |

|                                       |
|---------------------------------------|
| <b>Clauses and Schedules affected</b> |
|                                       |

|                                          |                          |                          |
|------------------------------------------|--------------------------|--------------------------|
| <b>Associated Change Control Notices</b> |                          |                          |
| <b>CCN No.</b>                           | <b>Name of Agreement</b> | <b>Date of Agreement</b> |
|                                          |                          |                          |

|                                                       |
|-------------------------------------------------------|
| <b>Reason for change</b>                              |
| <b>Description of Change</b>                          |
| <b>Changes to contract</b>                            |
| <b>Impact of change on other agreement provisions</b> |
| <b>Timetable for implementation</b>                   |

|  |
|--|
|  |
|--|

|                                                 |                                                                       |
|-------------------------------------------------|-----------------------------------------------------------------------|
| <b>Acceptance</b>                               |                                                                       |
| <b>Signed for and on behalf of THE PROVIDER</b> | <b>Signed:</b><br><b>Print name:</b><br><b>Title:</b><br><b>Date:</b> |
| <b>Signed for and on behalf of HEE</b>          | <b>Signed:</b><br><b>Print name:</b><br><b>Title:</b><br><b>Date:</b> |

## SCHEDULE TWO – FUNDING

The following Schedule sets out the Funding for the Services as part of the NHS Education Contract.

### Allocation of Funding

- 1 Funding to the Provider is in accordance with the latest information from the following:
  - 1.1 The Education and Training Tariff, as issued by the Department of Health and Social Care and HEE;
  - 1.2 The HEE NHS Education Funding Guide;
  - 1.3 As agreed within the TPA-UGME; and
  - 1.4 HEE NHS Education Contract Funding Schedule Guide, as updated throughout the year.
- 2 Additional Funding outside of scope of paragraph 1 for Services, as detailed in Schedule 1 are:

| Service as per Schedule 1 | Funding |
|---------------------------|---------|
|                           |         |
|                           |         |
|                           |         |

- 3 Funding is conditional on compliance with Schedule 3 Key Performance Indicators and the obligations contained within the NHS Education Contract, and this Schedule.
- 4 HEE may contribute to salary costs for Staff on Programmes. The level of this contribution will be determined by HEE and in accordance with this Schedule.
- 5 HEE may also contribute to non-salary costs for Staff on Programmes. This may include course fees, travel and subsistence and accommodation expenses (for example) or any other non-salary costs that the HEE deems it necessary to fund. The level of this contribution will be determined by HEE and in accordance with this Schedule.
- 6 In relation to clause 16.9 of the NHS Education Contract, Funding will be adjusted as per this Schedule when Learners increase or decrease.



## **Payments**

- 7 For NHS Placement Providers HEE may at the beginning of the financial year make an advanced payment on agreement, which covers the first quarters anticipated activity, this will be reconciled in alignment with Schedule 5 data collections.
- 8 Funding is provided following release of HEE's detailed Funding notification as an update to this Schedule, and Providers are to issue an invoice for the amount provided from HEE.
- 9 On receipt of a valid invoice, including a purchase order number if necessary, Funding will be provided within 30 Business Days of receipt of the valid invoice.
- 10 When circumstances are agreed, by exception only, between the Provider and HEE, payments may be issued without an invoice.

## SCHEDULE THREE – QUALITY AND CONTRACT PERFORMANCE

This schedule sets out the expectations for Providers in respect of the application and monitoring of quality through the HEE Quality Framework and associated Quality and Performance Requirements.

### 1. INTRODUCTION

- 1.1 The HEE Quality Framework is a risk based-process and will be enacted in the first instance where quality concerns are identified.
- 1.2 Contract review and monitoring is a routine process with a response that is proportionate and consistent based on perceived level of assurance gained through quality monitoring and delivery of Services against the contractual obligations contained in this NHS Education Contract.

### 2 QUALITY

- 2.1 The HEE *Quality Strategy* sets out HEE's strategic national and local priorities and overarching processes for continuous quality improvement and innovation in healthcare education and training. This is underpinned by the HEE Quality Framework, which enables HEE, in collaboration with partners and stakeholders, to drive sustainable quality improvement across all Learning Environments for its Learners. It ensures that HEE has a clear focus on the quality of the Learning Environments by setting out the quality standards HEE expects of all clinical learning environments where HEE's Learners are placed and to safeguard this through the NHS Education Contract.
- 2.2 The HEE Quality Framework applies to all clinical learning environments within which HEE's Learners are placed – across a variety of providers and settings (including primary, community and private sector) and covers all the professional groups they host.
- 2.3 It articulates HEE's expectations of the quality of the clinical environment as a whole system, complementing the other regulatory and professional frameworks and requirements, where relevant. It manages this through the following five core domains:
  - 2.3.1 **Learning environment and culture** (relating to the settings within which Learners are located and the activity of education and training takes place);
  - 2.3.2 **Educational governance and commitment to quality** (describing the organisational ethos, priorities, structures, rules and policies in place to support learning);
  - 2.3.3 **Developing and supporting learners** (the resources, support and tools Learners need to succeed);

- 2.3.4 **Developing and supporting supervisors** (the resources and support required by those guiding and overseeing the clinical and educational development and progression of Learners); and
- 2.3.5 **Delivering programmes and curricula** (what organisations need to do to ensure that the infrastructure and experiences they can provide for Learners, map to education and training needs, including Placement Providers' collaboration with the wider system to achieve this).
- 2.4 Each domain includes a set of specified standards, supported by indicative quality descriptors.
- 2.5 This contract will enable all parties to ensure that the quality monitoring processes within the framework provide assurance of a high quality learning environment within the following principles:-
  - 2.5.1 Learner and trainer safety and wellbeing must be maintained at all times.
  - 2.5.2 Inductions are in place and are key to quality and Service User safety.
  - 2.5.3 Supervision for Learners is paramount throughout and aligned to specific professional body requirements.
  - 2.5.4 Quality improvement is promoted throughout education and training.
  - 2.5.5 The learning environment is multi-professional.
  - 2.5.6 The learning environment promotes equality and diversity and inclusion.
  - 2.5.7 The learning environment promotes consistency and a common language.
  - 2.5.8 The learning environment encourages innovation.
  - 2.5.9 The organisation facilitates a cross-system and collaborative approach to quality.
  - 2.5.10 The organisation ensures a system and process to raise concerns at all levels.
- 2.6 HEE's quality management processes are defined in its *Quality Strategy* and facilitates a risk- based approach with exception reporting in relation to the monitoring and assessment of the learning environment. It outlines the responsibilities, expectations of all parties and the quality standards expected to be met as outlined above and in the *Quality Strategy* and Quality Framework.

### 3 **CONTRACT PERFORMANCE MONITORING**

- 3.1 The Provider is required to assure HEE on how it is performing and delivering against the contract including assuring services are delivered as required within the principles outlined in the *Quality Strategy* and Quality Framework. This is required to provide assurance that the provision of healthcare education and training meets the expectations and standards required.
- 3.2 This should include as a minimum:-
- 3.2.1 Assurance that where there are specific quality issues or concerns identified, the Provider is actively engaging and cooperating with HEE in remedial and quality improvement activities;
  - 3.2.2 Assurance that all other regulatory conditions are being met (or the Provider is actively engaging and cooperating with a Regulator to address any issues);
  - 3.2.3 Assurance that regular communication is taking place between the Provider and HEE and any other stakeholders (for example between HEIs and placement providers) as are necessary to deliver agreed Services;
  - 3.2.4 Assurance that HEE are notified of any issues in relation to Learners, including identification of any risks or concerns through, for example, internal audits, surveys or academic/placement feedback.
- 3.3 HEE will triangulate this information with a range of –intelligence including, for example:

*Please note this is not an exhaustive list.*

- 3.3.1 National Education Training Survey (NETS)
- 3.3.2 GMC National Training Survey (NTS)
- 3.3.3 CQC reports and local intelligence
- 3.3.4 NHSE/I reports and local intelligence
- 3.3.5 Professional and/or regulatory body reports and intelligence
- 3.3.6 HEE Student Data Collections
- 3.3.7 Placement feedback from placement or education provider and or Learners

- 3.3.8 Feedback from, for example, tutor, dean, training programme director, head of school, chief nurse, AHP lead etc
- 3.4 Review Meetings are not required to take place between HEE and the Provider **unless** HEE is not assured of the quality of the delivery of Services, and where the Provider:
  - 3.4.1 Does not meet the conditions of this contract and the HEE Quality Framework
  - 3.4.2 Does not meet all regulatory conditions
  - 3.4.3 Does not have regular communication between the Provider and HEE.
- 3.5 HEE may agree to formally note that conditions are not met and that a formal Review Meeting shall take place, in these circumstances a letter of confirmation shall be provided from HEE to the Provider. Meetings can take place face to face or virtually at the discretion of HEE teams.
- 3.6 Where there are specific concerns or issues an extra-ordinary Review Meeting may be convened with representatives from the quality, commissioning, finance, and/or performance and operations department of HEE.
- 3.7 Annex 1 outlines the KPIs required as part of this contract.

### ANNEX 1 – CONTRACT PERFORMANCE KPIS

| KPI Number | Nationwide Key Performance Indicators (KPI)<br>All Providers                                                                                                                                                                                                                                                                                                                                                                                       |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1          | Does the Provider have the numbers of Clinical Educators to support practice placements, and/or the numbers of Staff to provide the Services                                                                                                                                                                                                                                                                                                       |
| 2          | Is there evidence that the Provider has ensured that the hours of work of Learners meet the requirements of the Working Time Regulations 1998 (as amended) and where the maximum weekly limit is exceeded, Learners bringing this to the attention of the Provider shall be given the opportunity to enter into an opt-out agreement. The Provider is expected to support flexible working in line with the NHS 'Improving Working Lives' standard |
| 3          | Has the Provider given confirmation that Clinical Educators have the appropriate time built into job plans/roles/workload and have access to CPD                                                                                                                                                                                                                                                                                                   |
| 4          | Has the Placement Provider sufficient, appropriately registered, qualified and experienced medical, nursing and other clinical and non-clinical Staff to enable the Services to be provided in all respects and at all times in accordance with this contract.                                                                                                                                                                                     |
| 5          | Has the Provider shared details of its workforce learning needs and Learner/training needs analysis along with a summary of Staff training provided and appraisals undertaken.                                                                                                                                                                                                                                                                     |

### ANNEX 2 – BI-ANNUAL REPORT [NOT APPLICABLE]

## **SCHEDULE FOUR - PLACEMENT AGREEMENT**

### **Standard Placement Agreement**

between

**[Placement Provider]**

and

**[Education Provider]**

**This Placement Agreement** is made on [INSERT DATE]

**Between**

[the **EDUCATION PROVIDER**] whose head office is at [insert address] ("**Education Provider**"); and

[the **PLACEMENT PROVIDER**] whose head office is at [insert address] ("**Placement Provider**");

each a **Party** and together the **Parties**.

## **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Placement Agreement, unless the context otherwise requires:

- 1.1.1 Capitalised terms have the meanings as set out in the table below, and any capitalised terms not defined in that table are as defined in the NHS Education Contract.
- 1.1.2 References to Schedules shall be references to Schedules in the NHS Education Contract.
- 1.1.3 A reference to the singular includes the plural and vice versa and reference to a gender includes any gender.
- 1.1.4 The headings in this Placement Agreement will not affect its interpretation.
- 1.1.5 Where either the Education Provider or the Placement Provider has entered into a TPA as well as this Placement Agreement, the terms of the TPA shall prevail. If there is any conflict between the terms of the TPA and the terms of the NHS Education Contract, the terms of the NHS Education Contract will prevail.

|                                |                                                                                                                                                                                                                                          |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Action Plan</b>             | means the action plan to be prepared and implemented by the Education Provider and the Placement Provider; and                                                                                                                           |
| <b>Attendance Arrangements</b> | means an arrangement by which a member of Education Provider Staff shall attend the Placement Providers Premises to facilitate learning which may be through an honorary contract or licence to attend or a similar form of arrangement. |



## **2 EDUCATION PROVIDER RESPONSIBILITIES**

The Education Provider shall, in addition to its responsibilities set out under its NHS Education Contract with HEE and any TPA that it enters into between HEE and a Placement Provider, comply with the following obligations:

### **2.1 Facilitation and assessment of practice learning**

- 2.1.1 nominate a “lead” or “leads” who will be the key contact point(s) at the Education Provider for the Placement Provider and inform the Placement Provider of the identity and contact details of such lead or leads. A “lead” may be the same individual appointed by the Education Provider as the Provider Representative under clause 24.2 of its NHS Education Contract;
- 2.1.2 provide information to the Placement Provider Staff involved in the facilitation and assessment of practice learning on the specific requirements of the practice learning component of each relevant Programme and Placement;
- 2.1.3 provide education resources and/or study days for Placement Provider Staff to develop the competencies that they require to facilitate learning and carry out assessment of Learners in the Premises;
- 2.1.4 ensure that it will engage with a representative sample of senior Placement Provider Staff (of a level of seniority to be agreed between the relevant Education Provider and Placement Provider from time to time) to review:
  - 2.1.4.1 the Education Provider’s recruitment and selection policies and criteria;
  - 2.1.4.2 the curriculum as set by the Education Provider;
  - 2.1.4.3 the occupational health or DBS check clearance processes that the Education Provider has in place to screen Learners before they are admitted on a Placement in accordance with clauses 12 and 13 of the NHS Education Contract; and
  - 2.1.4.4 the information submitted by the Education Provider to the Placement Provider in accordance with Schedule 6 (Exchange of Information between HEE and the Provider) of the NHS Education Contract, as required by HEE as part of its Quality and Performance Requirements process, to confirm that the information submitted contains no material inaccuracies;

- 2.1.5 ensure that Learners are adequately prepared to carry out skills appropriate to the course they are undertaking prior to commencing a Placement;
  - 2.1.6 ensure that Learners have met appropriate standards in relation to clinical knowledge and skills commensurate with the Placement undertaken and their stage in their Programme; and
  - 2.1.7 support Placement Provider Staff to represent the Placement Provider in the delivery of the Education Provider's practice learning and assessment processes.
- 2.2 **Health and Safety, Occupational Health and Disclosure and Barring Service (DBS)**
- 2.2.1 agree with the Placement Provider the responsibility for any necessary work related checks and clearances, such as occupational health checks, right to work checks, Regulator checks, including any necessary DBS checks as in accordance with Applicable Law and Guidance; and disclosure from the Learner of any criminal convictions that might not be disclosed under the DBS checks;
  - 2.2.2 receive and evaluate the outcome of the checks and requests for clearances described at clause 2.2.1 above, and shall take any necessary action in relation to any Learner before that Learner commences a Placement. The Education Provider shall confirm to the Placement Provider that the necessary checks have been performed and are up-to-date;
  - 2.2.3 the Education Provider shall ensure that Learners have received manual handling, basic life support training, and any other mandatory training in accordance with the Regulator; curriculum requirements; as agreed with the Placement Provider; and in accordance with the Education Providers requirements.
- 3 **PLACEMENT PROVIDER RESPONSIBILITIES**
- 3.1 The Placement Provider shall, in addition to its responsibilities set out under its NHS Education Contract with HEE and any TPA that it enters into between HEE and an Education Provider, comply with the following obligations:
  - 3.2 **Facilitation and assessment of Practice Learning**
    - 3.2.1 ensure that all relevant Staff are competent to support Learner learning and assessment, meet Regulator requirements and/or are required to commence a programme of continuing professional development after recruitment and preceptorship in order to achieve these competencies (as appropriate);

- 3.2.2 have appropriate educational responsibilities included in their job descriptions and appropriate competencies defined in their job specifications;
- 3.2.3 are appropriately monitored, appraised and reviewed by the Placement Provider in relation to the provision of these responsibilities;
- 3.2.4 ensure that the Learners receive:
  - 3.2.4.1 an appropriate induction and orientation, including local policies and procedures relevant to each Placement; and
  - 3.2.4.2 feedback on their performance in a time frame appropriate to the activity performed to meet the specified learning outcomes set by the Education Provider with which such Learners are enrolled;
- 3.2.5 immediately notify the Education Provider of any Service provision changes that might affect Learners ability to meet the learning outcomes agreed with that Education Provider and offer alternative Placements if possible;
- 3.2.6 ensure that the assessment of Learners is appropriately moderated as agreed between each Education Provider and Placement Provider;
- 3.2.7 make appropriate and sufficiently qualified Staff available to ensure Learners receive an educationally relevant experience through effective facilitation and assessment of Placements. This will allow the development and testing of the competencies required to meet the Placement outcomes;
- 3.2.8 encourage and support sufficient and appropriate Staff to undertake education and development in the facilitation and assessment of Placements;
- 3.2.9 ensure that Education Provider Staff are granted access to the Learners' on Placements at Placement Provider Premises in order to conduct the assessments referred to in clause 3.2.8 (provided that the relevant Education Provider Staff give reasonable notice to the Placement Provider);
- 3.2.10 encourage and support Staff to participate in any disciplinary and appeals process relating to a Learner at the invitation of the Education Provider;
- 3.2.11 make available facilities to support Learners undertaking Placements in their clinical practice and/or service areas, including access to multi professional learning resource centres and information services where available;

- 3.2.12 ensure that Learners have, where reasonably practical, similar work facilities and amenities to those available to Placement Provider Staff;
  - 3.2.13 ensure that all Premises, facilities and equipment are suitable for the performance of the Services and comply with any applicable health and safety legislation;
  - 3.2.14 provide access to its Premises to external approving bodies (e.g. Health and Care Professions Council, Nursing and Midwifery Council) where it is necessary to inspect Placement provision pertaining to named courses;
- 3.3 Health and Safety, Occupational Health and Criminal Records Bureau Screening**
- 3.3.1 ensure the health, safety and welfare of Learners undertaking Placements, as they would for Staff;
  - 3.3.2 provide appropriate information on Placement Provider health and safety policy as part of the induction to the Placement;
  - 3.3.3 provide appropriate information to Learners about uniform policy or expected dress code, how to raise a matter of concern and enable Learners to contact senior Staff efficiently;
  - 3.3.4 notify the Education Provider of any serious untoward incidents where involvement of any Learner calls into question their fitness for training; or incidents which may adversely affect health or wellbeing of the Learner; within a timescale appropriate to the seriousness of the situation and in any event within two (2) Business Days; and
  - 3.3.5 satisfy itself that the procedures adopted by the Education Provider to undertake the checks and clearances are appropriate and accept as valid the DBS checks and occupational health checks carried out by each Education Provider.

#### **4 JOINT RESPONSIBILITIES**

- 4.1.1 The Placement Provider and the Education Provider shall, in addition to its responsibilities set out under their respective NHS Education Contracts with HEE and any TPA they enter into with HEE, comply with the following joint obligations:
- 4.2 Disciplinary Procedure and Fitness to Practice**
- 4.2.1 Either Party reserves the right to remove a Learner from a Placement in any case where a Party reasonably considers it necessary, having regard to the Learner's conduct or professional suitability. The decision to

remove a Learner from a Placement shall only be made by appropriate senior members of Staff (of a level of seniority to be agreed between the relevant Education Provider and the Placement Provider from time to time) and, wherever possible, shall only be made following consultation between the relevant Education Provider (with whom the Learner is enrolled) and Placement Provider.

- 4.2.2 Where it is deemed necessary by the Education Provider (with whom the Learner is enrolled) or by the Placement Provider (as appropriate) a Learner may be removed from participation in a Placement to allow for the proper investigation of the conduct or professional suitability of that Learner. Such a disclosure will be investigated by the Education Provider, and the Education Provider will take any necessary action using a decision-making process in collaboration with the Placement.
- 4.2.3 In any event, where the Education Provider or the Placement Provider (as appropriate) removes a Learner from a Placement, then it shall inform the Placement Provider or relevant Education Provider (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 relevant Education Provider and Placement Provider from time to time) that resulted in such action being taken.
- 4.2.4 The Placement Providers shall co-operate with the Education Provider in relation to any disciplinary proceedings or fitness to practice proceedings taken in connection with a Learner.
- 4.2.5 The Education Provider acknowledges that Placement Provider Staff shall have the right to support a Learner, and inform the Education Provider to ensure adequate support is offered from all parties.
- 4.2.6 In any case where disciplinary action is contemplated by the Placement Provider the matter shall be referred to the relevant Education Provider (with whom the Learner is enrolled), and, wherever possible, such referral shall be made within two (2) Business Days by the Placement Provider.
- 4.2.7 The conduct of any disciplinary or Fitness to Practise proceedings will be the sole responsibility of the Education Provider who shall determine the processes to be followed in accordance with its own, and Regulator policies and procedures.
- 4.2.8 The Parties shall agree to a joint review of policies and procedures at regular intervals to ensure appropriateness and clarity of responsibilities.

#### **4.3 Service User Complaints**

- 4.3.1 The Education Provider and the Placement Provider shall co-operate in answering any complaints raised by Service Users in relation to Learner conduct.

#### **4.4 Training, Feedback and Quality Assurance**

The Placement Provider and the Education Provider shall:

- 4.4.1 ensure Learners receive theoretical training by the Education Provider and practical training by the Placement Provider on using any equipment specific to the Placement safely;
- 4.4.2 collect and collate feedback from all Learners, facilitators and a representative sample of relevant Staff on the quality of Learners preparation for practice and the learning opportunities available in practice;
- 4.4.3 review audits and any relevant Action Plans to address any issues raised between Placement Provider and the Education Provider;
- 4.4.4 agree an Action Plan for each Programme or Placement to address any areas of risk identified as part of the audit process;
- 4.4.5 attend any meetings in relation to the Placements or pre-qualification programmes undertaken by Learner within the Education Provider;
- 4.4.6 endorse/sign off the educational audits and Action Plans for each practice learning area as agreed between the Parties at any such meeting; and
- 4.4.7 be involved in delivering any matters set out in the Action Plans.
- 4.4.8 The Parties acknowledge that each Education Provider and Placement Provider shall consult at least annually and in advance to agree and identify any Learners attending Placements from each Education Provider during the following year.

#### **4.5 Unlawful Discrimination**

- 4.5.1 With respect to any Education Provider Staff who will facilitate Learners during Placements, the relevant Education Provider and Placement Provider shall agree that those members of Education Provider Staff shall each:
- 4.5.1.1 enter into Attendance Arrangements or develop and implement within a reasonable period of time, or be deemed

to enter into Attendance Arrangements with the Placement Provider; and

4.5.1.2 have specific duties and obligations as regards Learner in relation to the facilitation of learning as appropriate.

4.5.2 The Placement Provider and the Education Provider 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 that Education Provider in consequence of any neglect, act or omission and/or breach of this Placement Agreement by the Placement Provider or the Education Provider (as appropriate) which results in:

4.5.2.1 any claim for, or in respect of, the death and/or personal injury of any employee or agent the Education Provider or the Placement Provider or any Learner;

4.5.2.2 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 Education Provider or the Placement Provider (as appropriate), breach of any express provision of this Placement Agreement by the Education Provider or the Placement Provider (as appropriate) or any deliberate act or omission of the Education Provider; and

4.5.2.3 any claim by a Learner arising out of or in the course of the delivery of the Services.

#### 4.6 Termination

4.6.1 This Placement Agreement or part of the Placement Agreement may be terminated immediately by agreement of the Parties where:

4.6.1.1 the Placements are no longer offered by the Placement Provider or have ceased to be required by the Education Provider; or

4.6.1.2 either the Placement Provider or the Education Provider commits a material or persistent breach of the NHS Education Contract, TPA or Placement Agreement that adversely impacts on the other party; or

4.6.1.3 either the Placement Provider or the Education Provider commits a material or persistent breach of the NHS Education Contract, TPA or Placement Agreement that adversely impacts on the other party; or

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

- 4.6.2 In the event of early termination in whole or in part, the Placement Provider will be required to share such information as the Education Provider deems relevant to any successor organisation.

#### **4.7 Confidential Information**

The terms of clause 34 of the NHS Education Contract shall apply between the Parties as if incorporated in this Placement Agreement.

#### **4.8 Data Protection**

The terms of clause 33 of the NHS Education Contract shall apply between the Parties as if incorporated in this Placement Agreement.

#### **4.9 Freedom of Information**

The terms of clause 32 of the NHS Education Contract shall apply between the Parties as if incorporated in this Placement Agreement.

#### **4.10 Agreement duration**

This Placement Agreement shall take effect for the Term of the NHS Education Contract.

#### **4.11 Disputes**

- 4.11.1 The Education Provider and the Placement Provider will attempt in good faith to resolve any Dispute or claim arising out of or relating to this Placement Agreement promptly through negotiation between their authorised representatives.
- 4.11.2 The Parties shall follow the process set out in clause 62 of the NHS Education Contract for resolving any Disputes.



#### 4.12 Variation

This Placement Agreement may be amended in whole or in part at any time by an agreement in writing, as per Annex 1.

### 5 Governing law

- 5.1 This Placement 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.

### 6 Jurisdiction

- 6.1 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 this Placement Agreement or its subject matter or formation.

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

Signed by [NAME OF DIRECTOR] for an on behalf of [NAME OF EDUCATION PROVIDER]

Signature:

Date:

Signed by [NAME OF DIRECTOR] for an on behalf of [NAME OF PLACEMENT PROVIDER]

Signature:

Date: