

NHS Education Contract



NHS EDUCATION CONTRACT

2021-2024

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NHS Education Contract

1st October 2022

NHS EDUCATION CONTRACT

between

HEALTH EDUCATION ENGLAND

and

SIGN HEALTH (Company Number 02610559)

Signed by  for and on behalf of **Health Education England**

Signature:



Date: 23 February 2023

Signed by

for and
on behalf
of **Sign
Health**



23 February 2023

Signature: Date:

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This contract is dated 1st October 2022

Parties

- (1) **HEALTH EDUCATION ENGLAND**, whose head office is at 1st Floor, Blenheim House, Duncombe Street, Leeds, LS1 4PL, (“**HEE**”); and
- (2) **SIGN HEALTH** whose head office is at Can Mezzanine Ltd, 7-14 Great Dover Street, London, United Kingdom, SE1 4YR (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.

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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:

- a) 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
- b) any change in the ability to control an NHS Foundation Trust, NHS Trust or NHS Body by virtue of the entering into of any franchise, management or other agreement or arrangement, under the terms of which the control over the management of the relevant NHS Foundation Trust, NHS Trust or NHS Body is conferred on another person without HEE's prior written consent.

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 33 in response to an FOIA or EIRs request, or information which is published as a result of government policy in relation to transparency.

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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 26.

Contract Performance Notice:

- a) a notice given by HEE to the Provider under clause 26, 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 26 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.

Doctors in Training: means post graduate medical trainees.

Doctors in Training 6 Principles: the six principles which have been widely recognised as helping to improve the pre-employment experience of Doctors in Training and which are set out in the HEE webpage (as may be updated or superseded from time to time).

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E-Learning: computer based learning.

EDS2: the Equality Delivery System for the NHS – EDS2, being a tool designed to help NHS organisations, in discussion with local stakeholders, to review and improve their equality performance for people with characteristics protected by the Equality Act 2010, and to support them in meeting their duties under section 1 of the Equality Act 2010, available on the NHS England webpage (as may be updated or superseded from time to time).

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.

Emergency Preparedness, Resilience and Response: the emergency preparedness, resilience and response guidance relating to the need to plan for, and respond to, a wide range of incidents and emergencies that could affect health or patient care, issued by NHS England / NHS Improvement and available on the NHS England webpage (as may be updated or superseded from time to time).

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.

ESR: the NHS electronic staff record.

Exception Report: a report issued in accordance with clause 26 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.

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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.

Guardians of Safe Working (GOSW): a person appointed formally in accordance with the 2016 terms and conditions of service (TCS) for doctors in training, or any replacement or successor guidance or terms and conditions, whose role is to be the guardian of safe working hours, designed to reassure junior doctors and employers that rotas and working conditions are safe for doctors and Service Users.

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.

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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

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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 Investigation.

Joint Investigation: an investigation into the matters referred to in a Contract Performance Notice in accordance with clause 26.

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.

Local Education and Training Boards (LETB): the local education and training board for each area in which the Provider provides the Services and any local education and training board which represents the Provider by virtue of arrangements made by HEE under paragraph 2(4)(c) of Schedule 6 to the Care Act 2014.

Managing Conflicts of Interest in the NHS: the NHS publication by that name available on the NHS England webpage (as may be updated or superseded from time to time).

Material Sub-Contract: a Sub-Contract for the delivery of all of any Service, or a significant and necessary element of any Service, or a significant and necessary contribution towards the delivery of any Service, as designated by HEE from time to time.

Material Sub-Contractor: a Sub-Contractor under any Material Sub-Contract.

Medical Programmes: programmes within a medical speciality, both undergraduate and postgraduate.

Milestones: a date by which a part of the Services is to be completed, as set out in Schedule 1.

Monitor: the corporate body known as Monitor provided by section 61 of the Health and Social Care Act 2012.

Monitor's Licence: a licence granted by Monitor under section 87 of the Health and Social Care Act 2012.

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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).

NHS Pension Scheme: the National Health Service Pension Scheme for England and Wales, established under the Superannuation Act 1972, governed by subsequent regulations under that Act including the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), and the National Health Service Pension Scheme Regulations 2015 (SI 2015/94).

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People Boards: the formal structure within systems, on a Regional and national basis, which includes Local Education and Training Boards (LETBs).

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 included in Schedule 4 Part C or in any other 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 Schedule 1 and any other documents, products and materials provided by the Provider to HEE in relation to the Services.

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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 27 at the intervals set out in clause 27 or as otherwise requested in accordance with clause 27.

Service Development and Improvement Plan or SDIP: an agreed plan setting out improvements to be made by the Provider to the Services (which may comprise or include any Remedial Action Plan agreed in relation to a Previous Contract).

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

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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.

Sub-Contract: any sub-contract entered into by the Provider or by any Sub-Contractor of any level for the purpose of the performance of any obligation on the part of the Provider under this contract.

Sub-Contractor: any sub-contractor, whether of the Provider itself or at any further level of sub-contracting, under any Sub-Contract.

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 26 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

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responsibilities and funding mechanism for healthcare education and training, the form of which is set out in Part A of Schedule 4.

Tri-Partite Agreement in Undergraduate Medical Education or TPA-UGME: 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 undergraduate medical education and training, which shall operationalise the mechanisms for agreeing any locally negotiated arrangements or variations in Funding. The form of TPA-UGME is set out in Part B of Schedule 4.

Values Based Recruitment: the values based recruitment framework published by HEE in October 2014 and refreshed in April 2016, available on the HEE webpage (as may be updated or superseded from time to time).

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.

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- 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 October 2022 and shall continue, unless terminated earlier in accordance with clause 38, until the expiry date 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 October 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:

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- (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 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.

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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.

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- 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. Education Provider's responsibilities

- 7.1 The Education Provider shall ensure that the curriculum is delivered in accordance with the relevant Regulator's obligations.
- 7.2 The Education Provider shall be approved by the Regulator for the education and training of the Programme they undertake.
- 7.3 The Education Provider shall inform HEE of any conditions imposed on the Provider from the Regulator. HEE will liaise with the appropriate Regulator as necessary for the safety of Learners and Service Users.
- 7.4 Education Providers are responsible for ensuring equality, diversity and inclusive practice in their marketing approach, application and recruitment process, Staff training, curriculum and

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curriculum development. Education Providers shall share information with HEE relating to all protected characteristics as requested by HEE for any purposes of education and training.

- 7.5 Education Providers should provide HEE with their Programme specific widening participation plans when requested, or plans which cover multiple Programmes, in accordance with guidance published by the Office for Students and accessible via the Office for Students webpage (as may be updated or superseded from time to time).
- 7.6 HEE will seek assurance from the Education Provider that expectations to improve representation of the community is reflected in recruitment, education and training, and completion of Programmes.
- 7.7 The Education 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 and targets developed for each profession.

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;

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- (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, which will be either a TPA and/or TPA-UGME, with any parties nominated by HEE for the education and training of Learners.

9.2 The form of TPA and TPA-UGME is set out in Schedule 4.

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.

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- 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.

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- 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 The Provider must cooperate with the Local Education and Training Boards incorporating the People Boards, the Healthcare System, and HEE in the manner and to the extent they request in planning the provision of, and in providing, education and training for healthcare workers, and must provide them with whatever information they request for such purposes. The Provider must have regard to the HEE Quality Framework and Regulator requirements.
- 11.13 If any Learners are members of the NHS Pension Scheme the Provider or Lead Employer must participate and must ensure that any Sub-Contractors participate in any applicable data collection exercise and must ensure that all data relating to Staff membership of the NHS Pension Scheme is up to date and is provided to the NHS Business Services Authority in accordance with Guidance.
- 11.14 The Provider must:
- (a) ensure that all Staff meet the requirements of the Regulator at all times during the Term;
 - (b) appoint one or more Freedom To Speak Up Guardians to fulfil the role set out in and otherwise comply with the requirements of National Guardian's Office Guidance or alternatively identify from a partner provider who the Freedom To Speak Up Guardian is and ensure all Learners are made aware;
 - (c) if undertaking medical education appoint one or more Guardians of Safe Working to fulfill the role set out in and otherwise comply with the requirements of 2016 terms and

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conditions of service (TCS) for doctors in training, or identify from a partner provider who the Guardians of Safe Working is and ensure all Learners are aware;

- (d) ensure that HEE is kept informed at all times of the person or persons holding the positions identified in clause 11.14(b) and (c);
- (e) 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
- (f) 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.

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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.

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14. All Learners

- 14.1 Where the Provider is an NHS Trust or an NHS Foundation Trust, the Provider warrants that it has developed a plan to implement in full the NHS People Plan.
- 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.

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- 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 The Provider shall ensure that where facilities have been provided by HEE or other providers to support specific education and training, that education and training shall have priority in the use of those facilities and that HEE has access without charge to these facilities for the purposes of education and training. Facilities provided for a specific Programme must be used to support that Programme in the first instance.
- 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.

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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 The Provider shall make available to Learners and Staff involved with any of the Programmes pursuant to this contract (in accordance with Schedule 1) proactive knowledge and library services and knowledge specialists as well as evidence resources, accessible through suitable technology and appropriate learning space.

15.12 The Provider will have in place access to free Wi-Fi and the necessary infrastructure to support access to evidence at the point of care and to technology enhanced learning accordance with Schedule 1.

15.13 The Provider shall ensure that Learners have access to appropriate technology and video conferencing for the purpose of undertaking education and training activity in connection with a Programme.

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.

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- 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, or that relevant Milestones 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

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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 and/or any Milestones;
- (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 or Milestones 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 16.6.

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.

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- 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.

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- 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 The Placement Provider must align local induction with the requirements outlined by Regulators and if necessary in the Doctors in Training 6 Principles, including the electronic transfer of Core Skills Training Framework competencies via ESR and the acceptance of these competencies to remove all unnecessary duplication of training; and
- 19.6 The Placement Provider must declare alignment and deliver statutory and mandatory training to the Core Skills Training Framework subjects to all Doctors in Training.
- 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. It is recommended that this is completed on ESR.
- 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 The Parties shall exchange information throughout the Term of this contract in accordance with Schedule 5 and 6.
- 20.2 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:

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- (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 Where the Provider is an NHS Trust or an NHS Foundation Trust, the Provider shall implement EDS2 and WRES, working in partnership as per clause 21.5.

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.

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- 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. Such person shall be the formal point of contact between HEE and the Provider, shall participate in the Review Meetings referred to in clause 27 and shall have power to bind HEE as regards the matters which this contract contemplates shall be considered by them and the Provider's Representative. HEE shall keep the Provider notified of the identity of HEE's Representative.

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- 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 and shall participate in the Review Meetings referred to in clause 27 and shall have power to bind the Provider as regards the matters which this contract contemplates shall be considered by them and HEE's Representative.
- 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 The Parties shall include on the agenda for each Review Meeting an opportunity for the Parties to discuss the ongoing performance of any TPA and any arising issues.

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.

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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.

Joint Investigation

26.9 If a Joint Investigation is to be undertaken:

- (a) HEE and the Provider must agree the terms of reference and timescale for the Joint Investigation (being no longer than 2 months) and the appropriate representatives from each relevant Party to participate in the Joint Investigation as well as HEE's Representative and the Provider's Representative; and
- (b) HEE and the Provider may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.

26.10 On completion of a Joint Investigation, HEE and the Provider must produce and agree a JI Report. The JI Report must include a recommendation to be considered at the next Review Meeting that either:

- (a) the Contract Performance Notice be withdrawn; or
- (b) a Remedial Action Plan be agreed and implemented.

26.11 Either HEE or the Provider may require a Review Meeting to be held at short notice within 5 Business Days to consider a JI Report.

Remedial Action Plan

26.12 If a Remedial Action Plan is to be implemented, HEE and the Provider must agree the contents of the Remedial Action Plan within:

- (a) 5 Business Days following the Contract Management Meeting; or
- (b) 5 Business Days following the Review Meeting in the case of a Remedial Action Plan recommended under clause 26.10(b),

as appropriate.

26.13 The Remedial Action Plan must set out:

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- (a) actions required and which Party is responsible for completion of each action to remedy the failure in question and the date by which each action must be completed;
- (b) the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained; and
- (c) any agreed reasonable and proportionate financial sanctions or other consequences for any Party for failing to complete any agreed action and/or to achieve and maintain any agreed improvement (any financial sanctions applying to the Provider not to exceed in aggregate 20% of the Actual Monthly Value in any month in respect of any Remedial Action Plan).

26.14 If a Remedial Action Plan is agreed during the final year of the Term, that Remedial Action Plan may specify a date by which an action is to be completed or an improvement is to be achieved or a period for which an improvement is to be maintained falling or extending after the Expiry Date, with a view to that Remedial Action Plan being incorporated in an SDIP under a subsequent contract between HEE and the Provider for delivery of services the same or substantially the same as the Services.

26.15 The Provider and HEE must implement the actions and achieve and maintain the improvements applicable to it within the timescales set out in, and otherwise in accordance with, the Remedial Action Plan.

26.16 HEE and the Provider must record progress made or developments under the Remedial Action Plan in accordance with its terms. HEE and the Provider must review and consider that progress on an ongoing basis and in any event at the next Review Meeting.

26.17 Each Party shall bear its own costs in relation to any Joint Investigation.

Withholding Funding/Learners for Failure to Engage or Agree

26.18 If:

- (a) either HEE or the Provider fails to attend a Contract Management Meeting within 20 Business Days following the date of the Contract Performance Notice to which it relates; or
- (b) at a Contract Management Meeting HEE and the Provider fail to agree a course of action in accordance with clause 26.7 and subsequently fail to agree within 20 Business Days following the Contract Management Meeting the terms of reference and timescale for a Joint Investigation in accordance with clause 26.9; or
- (c) on completion of a Joint Investigation, HEE and the Provider fail to agree a JI Report in accordance with clause 26.10 before the next Review Meeting; or
- (d) it has been agreed that a Remedial Action Plan is to be implemented, but the HEE and the Provider have not agreed a Remedial Action Plan within the relevant period specified in clause 26.10,

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then, unless the Contract Performance Notice has been withdrawn, they must immediately and jointly notify the Governing Body of both the Provider and HEE accordingly (and if one Party refuses to do so, the other may do so on behalf of both Parties).

26.19 If, 10 Business Days after notifying the Governing Bodies, and due wholly or mainly to unreasonableness or failure to engage on the part of the Provider:

- (a) HEE and the Provider have still not both attended a Contract Management Meeting; or
- (b) HEE and the Provider have still not agreed either a course of action or the terms of reference and timescale for a Joint Investigation; or
- (c) HEE and the Provider have still not agreed a JI Report; or
- (d) HEE and the Provider have still not agreed a Remedial Action Plan,

as the case may be, HEE may withhold, a reasonable and proportionate sum up to 40% of the Actual Monthly Value or withhold Learners attending Premises for each further month that the particular failure to attend or agree, as referred to in clauses 26.19(a) – (d) continues.

26.20 HEE must pay the Provider any sums withheld under clause 26.19 within 10 Business Days of receiving the Provider's agreement to a Remedial Action Plan (or, if earlier, of the withdrawal of the relevant Contract Performance Notice). Those sums are to be paid without interest.

Implementation and Breach of Remedial Action Plan

26.21 If, following implementation of a Remedial Action Plan, the agreed actions have been completed and the agreed improvements achieved and maintained, it must be noted in the next Review Meeting that the Remedial Action Plan has been completed.

Exception Report

26.22 If a Party fails to complete an action required of it, or to deliver or maintain the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan and does not remedy that failure within 5 Business Days following receipt of notice requiring it to do so, the Provider or HEE (as the case may be) may issue an Exception Report:

- (a) to the relevant Party's chief executive and/or Governing Body; and/or
 - (b) (if it reasonably believes it is appropriate to do so) to any appropriate Regulator,
- in order that each of them may take whatever steps they think appropriate.

Withholding of Funding at Exception Report for Breach of Remedial Action Plan

26.23 If the Provider fails to complete an action required of it, or to deliver the improvement required, by a Remedial Action Plan in accordance with that Remedial Action Plan:

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- (a) (if the Remedial Action Plan does not itself provide for a withholding or other financial sanction in relation to that failure) HEE may, when issuing an Exception Report, withhold in respect of each action not completed or improvement not met, a reasonable and proportionate sum of up to 5% of the Actual Monthly Value, from the date of issuing the Exception Report and for each month the Provider's breach continues and/or the required improvement has not been achieved and maintained, subject to a maximum monthly withholding in relation to each Remedial Action Plan of 50% of the Actual Monthly Value; and
- (b) HEE must pay the Provider any Funding withheld under clause 26.23(a) within 10 Business Days following HEE's confirmation that the breach of the Remedial Action Plan has been rectified and/or the required improvement has been achieved and maintained. No interest shall be payable on those sums.

Retention of Sums Withheld for Breach of Remedial Action Plan

26.24 If, 20 Business Days after an Exception Report has been issued under clause 26.22, the Provider remains in breach of a Remedial Action Plan, HEE may notify the Provider that any Funding withheld under clause 26.23(a) is to be retained permanently by HEE.

Unjustified Withholding or Retention of Funding

26.25 If HEE withholds sums under clause 26.18 or clause 26.23(a) or HEE retain sums under clause 26.24, and within 20 Business Days of the date of that withholding or retention the Provider produces evidence satisfactory to HEE that the relevant sums were withheld or retained unjustifiably, HEE must pay those sums to the Provider within 10 Business Days following the date of HEE's acceptance of that evidence, no interest shall be payable on these sums. If HEE does not accept the Provider's evidence the Provider may refer the matter to the dispute resolution procedure at clause 61.

Retention of Funding Withheld on Expiry or Termination of this Contract

26.26 If the Provider does not agree a Remedial Action Plan:

- (a) within 6 months following the expiry of the relevant time period set out in clause 26.12; or
 - (b) before the Expiry Date or earlier termination of this contract,
- whichever is the earlier, HEE may notify the Provider that any Funding withheld under clause 26.18 is to be retained permanently by HEE.

26.27 If the Provider does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this contract, HEE may notify the Provider that any Funding withheld under clause 26.23(a) is to be retained permanently by HEE.

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27. Review Meetings

- 27.1 Review Meetings are to take place bi-annually (twice per year) between HEE and the Provider, unless the following conditions are met:
- (a) HEE is assured of the delivery of Services, and that it meets the conditions of this contract and the HEE Quality Framework, and all regulatory conditions, and that regular communication has taken place between Provider and HEE, in which case the Provider and HEE may agree to formally note that conditions are met and a formal Review Meeting shall not take place, in these circumstances a letter of confirmation shall be provided from HEE to the Provider; and
 - (b) The Provider submits a bi-annual return on their progress with the conditions of this contract, the contents of which are satisfactory to HEE.
- 27.2 HEE may, in its absolute discretion, continue with a Review Meeting even when the conditions in clause 27.1 are considered to be met, as part of good governance and accountability practice.
- 27.3 Extra-ordinary review meetings may be called by HEE or the Provider, giving 10 Business Days' written notice. In these circumstances the calling Party shall issue an agenda to the other Party within 5 Business Days of the meeting.
- 27.4 A Review Meeting shall be convened with representatives from the quality, finance, and performance and operations department of HEE.
- 27.5 HEE may determine at its absolute discretion to hold a Review Meeting via the submission of a paper review, rather than an in person formal attendance. The Provider may request that an in person formal attendance Review Meeting proceeds setting out its justification to HEE in writing.

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. Intellectual property rights

- 29.1 Except as set out expressly in this contract no Party shall acquire the Intellectual Property Rights of any other Party.

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- 29.2 The Provider confirms and agrees that all Intellectual Property Rights in and to the Provider Outputs, Services, materials and any other output developed by the Provider as part of the Services shall be owned by HEE.
- 29.3 The Provider hereby assigns with full title guarantee by way of present and future assignment all Intellectual Property Rights in and to such Provider Outputs, Services, materials and other outputs to HEE.
- 29.4 The Provider shall ensure that all Staff assign any Intellectual Property Rights they may have in and to such Provider Outputs, Services, materials and other outputs to the Provider to give effect to clause 29.3 and that such Staff absolutely and irrevocably waive their moral rights in relation to such Provider Outputs, Services, materials and other outputs.
- 29.5 This clause 29 shall continue notwithstanding the expiry or earlier termination of this contract.
- 29.6 The Provider is hereby granted a non-exclusive, non-transferable, royalty-free, non-sublicensable right and license to use all Intellectual Property Rights assigned pursuant to clause 29.3 for academic and research purposes, including research involving projects funded by third parties, provided that no third party shall gain any rights in or to such Intellectual Property Rights.
- 29.7 For the avoidance of doubt, the Provider is not granted permission to use any Intellectual Property Rights licenced to it in accordance with clause 29.6 for commercial gain.
- 29.8 All Intellectual Property Rights used or owned by a Party prior to the date of this contract ("**Background IP**") is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background IP has derived).
- 29.9 Each Party grants to the other a royalty-free, non-exclusive licence to use its Background IP for the sole purpose of developing and delivering the Programmes, but for no other purpose. Neither Party shall be entitled to grant any sub-licence over or in respect of the other Party's Background IP.
- 29.10 The Provider:
- (a) warrants that the receipt, use and onward supply of the Services and the Provider Outputs by the Provider shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - (b) shall indemnify HEE in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by HEE arising out of or in connection with any claim brought against HEE for actual or alleged infringement of a

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third Party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Provider Outputs; and

- (c) shall not be in breach of the warranty at clause 29.10(a), and HEE shall have no claim under the indemnity at clause 29.10(b), to the extent the infringement arises from:
 - (i) the use of HEE Materials in the development of, or the inclusion of HEE Materials in any Provider Output;
 - (ii) any modification of the Provider Outputs or Services, other than by or on behalf of the Provider; and
 - (iii) compliance with HEE's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Provider shall notify HEE if it knows or suspects that compliance with such specification or instruction may result in infringement.

29.11 HEE:

- (a) warrants that the receipt and use of HEE Materials in the performance of this contract by the Provider, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Provider in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any claim brought against the Provider, its agents, subcontractors or consultants for actual or alleged infringement of a third Party's Intellectual Property Rights to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this contract of HEE Materials.

29.12 If either Party (the **Indemnifying Party**) is required to indemnify the other Party (the **Indemnified Party**) under this clause 29, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 29.10(b) or clause 29.11(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Provider of the Indemnified Party's costs so incurred; and

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- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

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 co-operation 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;

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- (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(b) 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 The Parties acknowledge that where the Provider acts as data processor on behalf of HEE, Schedule 5 shall determine the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data and categories of data subject. When acting as processor, the Provider shall:

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- (a) process that personal data only on the documented written instructions of HEE unless the Provider is required by Applicable Law and/or Guidance to otherwise process that personal data. Where the Provider is relying on Applicable Law as the basis for processing personal data, the Provider shall promptly notify HEE of this before performing the processing required by the Applicable Law and/or Guidance unless the Applicable Law and/or Guidance prohibits the Provider from so notifying HEE;
- (b) at the written direction of HEE, delete or return personal data and copies thereof to HEE on termination of the contract unless required by Applicable Law and/or Guidance to store the personal data; and
- (c) maintain complete and accurate records and information to demonstrate its compliance with this clause 33 and allow for audits by HEE or HEE's designated auditor and immediately inform HEE if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

33.3 Where both Parties are data controllers in respect of personal data processed for the purposes of this contract, they shall document their respective rights and responsibilities in respect of such data based on the model data sharing agreement at Schedule 6.

33.4 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.

33.5 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;

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- (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.

33.6 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;

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(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 £2,000,000 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 £5,000,000 for claims arising from a single event or series of related events in a single calendar year;

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- (c) employer's liability insurance with a limit of at least £5,000,000 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 £10,000,000 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.

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- 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:

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- (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.

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- 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.

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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 39.1, 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 388, clause 49, clause 51, clause 62, clause 63 and 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.

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40. Publicity and NHS Branding

- 40.1 The Provider must not, without the prior written consent of HEE, apply NHS branding or HEE's name or logo to the Services, and must obtain the HEE's prior written approval (not to be unreasonably withheld) for any publicity in connection with the Provider's receipt of the Funding.
- 40.2 If HEE does permit the Provider to use NHS branding, its name or logo in connection with the Services, that permission is limited to the purposes and duration communicated to the Provider by HEE and the Provider must comply with the NHS Branding Guidelines.
- 40.3 Goodwill in the Services, to the extent branded as NHS services, shall belong separately to both the Secretary of State and the Provider. The Provider may enforce its rights in its own branding even if it includes the NHS Brand. The Provider must provide whatever assistance the Secretary of State may reasonably require to allow the Secretary of State to maintain and enforce his rights in respect of the NHS Brand.

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.

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- 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. Assignment, sub-contracting, and other dealings

- 42.1 HEE may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner any or all of its rights and obligations under this contract to any third party, provided that it gives prior written notice of such subcontract or delegation to the Provider.
- 42.2 The Provider may with the permission of HEE (provided that the Provider gives prior written notice of such dealing to HEE) or at the direction of HEE assign, transfer, sub-contract, or deal in any other manner with any or all of its rights and obligations under this contract.
- 42.3 HEE may at its absolute discretion require the Provider to work collaboratively with another provider and/or enter into a TPA in order to deal with any of the Provider's rights and obligations under this contract.
- 42.4 Sub-contracting any part of this contract will not relieve the Provider of any of its obligations or duties under this contract. The Provider will be responsible for the performance of and will

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be liable to HEE for the acts and/or omissions of all Sub-Contractors as though they were its own.

- 42.5 Any positive obligation or duty on the part of the Provider under this contract includes an obligation or duty to ensure that all Sub-Contractors comply with that positive obligation or duty. Any negative duty or obligation on the part of the Provider under this contract includes an obligation or duty to ensure that all Sub-Contractors comply with that negative obligation or duty.
- 42.6 If the Provider enters into a Sub-Contract it must ensure that the Sub-Contractor does not further sub-contract its obligations under the Sub-contract without the approval of HEE.
- 42.7 The Provider will remain responsible for the performance and will be liable to HEE for the acts and omissions of any third party to which the Provider assigns or transfers any obligation or duty under this contract, unless and until the terms of that assignment, or transfer have been accepted by the third party so that the third party is liable to HEE for its acts and omissions.

43. Replacement of Sub-Contractors

- 43.1 If HEE is entitled to terminate this contract in accordance with clause 38, wholly or partly in connection with any Sub-Contract or as a result of any act or omission on the part of a Sub-Contractor, HEE may (without prejudice to any other rights HEE may have in relation to that event) by serving written notice upon the Provider, require the Provider to remove or replace the relevant Sub-Contractor within:
 - (a) 5 Business Days; or
 - (b) whatever period may be reasonably specified by HEE (taking into account any factors which HEE considers relevant in its absolute discretion, including the interests of Service Users and the need for the continuity of Services),

and the Provider must remove or replace the relevant Sub-Contractor (as required) within the period specified in that notice.

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,

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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

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- (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.

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- 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 48 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.

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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.

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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.

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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),

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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.

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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
- (c) if the Regional Director of HEE and the senior director of the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (**ADR notice**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation shall start not later than 30 days after the date of the ADR notice.

62.2 No Party may commence any court proceedings under clause 64 (Jurisdiction) (in relation to the whole or part of the Dispute until 30 Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

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- 62.3 If the Dispute is not resolved within 30 Business Days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 Business Days, or the mediation terminates before the expiration of the said period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 64 (Jurisdiction).

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 (including Secondment Agreement)

Schedule 2 Funding

Schedule 3 Quality and Performance

Schedule 4 Tri-Partite Agreements

- (a) Part A – Tri-Partite Agreement, including Placement Agreement
- (b) Part B – Tri-Partite Agreement for Undergraduate Medical Education
- (c) Part C – Standard Placement Agreement

Schedule 5 Processing, Personal Data and Data Subjects

Schedule 6 Model Data Sharing Agreement