NHS
East Midlands

LEARNING DEVELOPMENT AGREEMENT

BETWEEN

East Midlands Strategic Health Authority

AND

(insert service provider name)

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This **AGREEMENT** is dated 1st day of April 2011.

This Agreement is made between :

1) East Midlands Strategic Health Authority hereafter know as "the SHA", whose principal place of business is at Octavia House, Interchange Business Park, Bostocks Lane, Sandiacre, Nottinghamshire NG10 5QG

and

2) (insert service provider name) hereafter known as "the Service Provider Organisation" whose principal place of business is at (insert service provider address)

Together referred to as the "Parties".

RECITALS

(a) The SHA commission professional healthcare education to meet the workforce planning requirements of service provider organisations and recognises the educational contribution of service provider organisations to enable healthcare staff to become and remain "fit for purpose".

(b) The purpose of this Agreement is to ensure that healthcare practice learning is effectively managed and that it meets minimum standards as set out by the SHA whilst being cognisant of national guidance. It is acknowledged that the standards are a minimum and that both Parties will use reasonable endeavours to enhance the quality of professional healthcare education through partnership with each other and with associated Education Providers.

AGREED TERMS

1 COMMENCEMENT AND DURATION

1.1 The form of the Agreement (Section 1), together with the attached Schedules (Section 2), will collectively be known as the "Agreement".

1.2 The Service Provider Organisation shall provide the Services to the SHA, on the terms of this Agreement, from 1 April 2011. The Services supplied under this Agreement shall continue to be supplied for a period of twelve (12) months from the date of this Agreement and shall continue to be supplied unless this Agreement is terminated by one of the Parties giving the other at least six (6) months written notice.

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2. DEFINITIONS AND INTERPRETATIONS

2.1 Unless specifically stated otherwise, within this Agreement the following words and phrases shall be defined as indicated :

2.1.1 *"Business Day"* – shall mean any week day on which the Banks are open for business in the City of London.

2.1.2 *"Confidential Information"* – all information in whatever form relating to the discloser's business which is marked as confidential or by its nature is deemed to be confidential including any information contained in medical records or pertaining to clients and/or patients.

2.1.3 *"Clinical Resources"* shall mean all those resources defined or identified in the associated Schedules.

2.1.4 *"Education Provider"* shall mean any organisation that provides professional healthcare education inclusive of the Service Provider Organisation, further and higher education institutions, and the East Midlands Healthcare Workforce Deanery Transitional Provider Unit.

2.1.5 *"Healthcare Services"* shall mean all those services provided to clients/patients as part of NHS services (including where appropriate social care).

2.1.6 *"Learner"* shall mean any individual or collective learner/student/trainee undertaking healthcare education.

2.1.7 *"Local Health Community (LHC)"* shall mean all NHS Trusts, including East Midlands Ambulance Service or other National Health Service bodies (excluding the SHA) whether or not organisations with Foundation Trust status within the East Midlands and the voluntary and independent health sector and social care organisations.

2.1.8 *"NHS"* shall mean the National Health Service incorporating provision by public sector, independent or voluntary sector providers that are commissioned to deliver healthcare as part of NHS services.

2.1.9 *"NHS Constitution"* shall mean the document entitled "The NHS Constitution" published by the Secretary of State on 21st January 2009 or any revised version of that document.

2.1.10 *"Practice Learning"* shall mean the aspect of professional healthcare education that takes place outwith the Education Provider and usually, but not exclusively, within clinical service settings. Practice learning is normally conducted under the direct supervision of Service Provider staff.

2.1.11 *"Practice Learning Opportunities"* shall mean those episodes of structured practice learning (often informally referred to as placement).

2.1.12 *"Quality Assurance"* shall mean 'the setting and establishment of quality standards'.

2.1.13 *"Quality Control"* shall mean 'the application of policy and process to achieve required Quality Assurance standards'.

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2.1.14 *"Quality Management"* shall mean 'overview of compliance with those quality standards as set out in the associated Schedules 4a, 4b, 4c, 4d and 4e'.

2.1.15 *"Services"* shall mean the services to be provided by the Service Provider Organisation under this Agreement as set out in the accompanying schedules and the Service Provider's obligation under this Agreement, together with any other services which the SHA agrees to take from the Service Provider Organisation.

2.1.16 *"Supervisor"* shall mean any member of Service Provider Organisation staff allocated the responsibility for facilitating, guiding, supporting, teaching, assessing or supervising a Learners' episode of education and/or training for a particular Practice Learning Opportunity. The term shall include but not be exclusive to: assessors, clinical tutors, clinical supervisors, education supervisors, mentors, practice educators, supervisors, verifiers etc.

3. SERVICE PROVIDER ORGANISATION OBLIGATIONS

3.1 The SHA has entered into agreements with Education Providers for the provision of education and training for existing and prospective healthcare staff of service provider organisations within the SHA. The listing of pre and post registration contracts can be found at : http://www.eastmidlands.nhs.uk/education-commissioning-unit/contracts/ (accessed 28th September 2010) These agreements have been entered into on behalf of, and in consultation with, a number of service provider organisations and require collaboration between the Education Providers, the SHA and the Service Provider Organisation to ensure Learners gain the requisite knowledge, skills, aptitude and qualifications to be competent practitioners. The level of provision entered into for these agreements is service driven and is determined through consultation with the Local Health Community (LHC) and informed by national and local health workforce planning processes.

3.2 The Service Provider Organisation recognises its responsibility to support Learners across all forms of healthcare learning, in accordance with Schedules 2a, 2b, 2c, 2d, 2e, 3, 4a, 4b, 4c, 4d, 4e and 5, and shall provide the educational infrastructure and resources necessary to support, train and educate all commissioned healthcare professional Learners allocated to the Service Provider Organisation including trainee doctors and pre and post registration healthcare staff other than Doctors.

3.3 The Service Provider Organisation shall ensure the efficacy of professional practice learning including, but not exclusive to, the provision of : sufficient numbers of trained and qualified Supervisors, sufficient Clinical Resources and, sufficient Practice Learning Opportunities to meet the commissions placed on behalf of the local, regional and national NHS. Any changes to the agreed number of commissions and any possible impact to resources will be negotiated in good faith with the Service Provider Organisation in advance through the

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annual workforce planning process between the SHA Local Health Communities and national bodies.

3.4 The Service Provider Organisation shall provide information, as reasonably requested by the SHA, LHC or the Education Provider, in respect of the achievement, monitoring and enhancement of the tenets of this Agreement and information required to plan, commission and manage workforce planning and education across the SHA.

3.5 The Service Provider Organisation will actively participate in the development, quality assurance, quality management, quality control and commissioning of educational programmes and associated activity. This will include compliance with the Schedules as appropriate.

3.6 The Service Provider Organisation will participate in and support the relevant county LHC(s) and the host organisation of the LHC(s) to achieve key performance indicators as specified in the Service Level Agreement between the SHA and the host organisation of the LHC and as detailed in Appendix 2.

3.7 The Service Provider Organisation will negotiate with all those Education Providers, that through contractual arrangements with the SHA use the Service Provider Organisation for their Learners, the principles of their partnership working which shall cover, as a minimum:

3.7.1 Liaising with the Education Providers and the SHA regarding any fundamental change to the Healthcare Services commissioned or provided which could be reasonably anticipated to have a material effect on Practice Learning or Practice Learning Opportunities.

3.7.2 Agreement with Education Providers to protect the health, safety and welfare of all Learners whilst working or undertaking Practice Learning Opportunities within the Service Provider Organisation.

3.7.3 Ensuring that it is possible for the employees of the Education Providers to work in an honorary capacity within the Service Provider Organisation for educational purposes.

3.7.4 Ensuring that Learners using the Service Provider Organisation for Practice Learning purposes have an honorary contract, or an equivalent arrangement, for the term of that episode of learning.

3.7.5 Providing healthcare practice expertise for Education Providers according to local agreement including teaching, research and joint appointments.

3.8 The Service Provider Organisation shall, in performing its NHS commissioned functions, have regard to the NHS Constitution.

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4. AGREEMENT PRICE

4.1 The Agreement price payable by the SHA and arrangements for payment are specified within the Finance and Activity Schedules 2a, 2b, 2c, 2d, 2e.

4.2 This Agreement does not include any additional sums payable for the provision of any educational activities identified over and above those specified in Schedules 2a, 2b, 2c, 2d, 2e.

4.3 Finances associated with this Agreement shall be conditional upon provision of the agreed educational services and Clinical Resources for all professional healthcare groups and the achievement of quality standards set out in the associated Schedules 4a, 4b, 4c, 4d and 4e.

4.4 The Agreement price is exclusive of Value Added Tax which shall, where applicable, be paid in addition, at the rate in force at the time of supply of the services, subject to the Service Provider Organisation supplying a VAT invoice to the SHA.

4.5 The Finance and Activity Schedule will be determined annually according to commissioned numbers and East Midlands tariff prices.

5. MONITORING AND QUALITY

5.1 The Service Provider Organisation shall ensure the quality of professional healthcare education through rigorous and robust quality control improvement and monitoring processes as stipulated in the Schedules which incorporate, as a minimum, the standards set out within this Agreement as well as national occupational, professional and regulatory standards.

5.2 This Agreement shall be subject to an annual review as detailed in Schedule 5 incorporating self-assessment, external audit and joint action planning processes to ensure the maintenance and enhancement of standards and quality.

5.3 This Agreement shall be subject to a comprehensive strategic review involving all relevant stakeholders every five (5) years. The next review will be held during 2013.

5.4 The Schedules associated with this Agreement shall be amended in partnership as a result of changes to national guidance and requirements in agreement between the approved representatives of the signatories.

5.5 A Contract Management Forum will be appointed by the Parties to this Agreement as specified in Schedule 5. Each Party will give written notice to the other of any subsequent change of its nominees on the Contract Management Forum, as soon as reasonably practicable following that change.

6. OUTPUTS

6.1 The Service Provider Organisation shall provide education and learning activities as outlined in the associated Schedules 1 to 5.

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6.2 The Service Provider Organisation shall actively and constructively engage in quality assurance, management and control processes as outlined in Schedule 3, including participation in self-assessment, external audit activities and joint action planning as dictated by national and professional guidance within locally determined processes.

6.3 The SHA shall make financial payments to the Service Provider Organisation as outlined in Schedule 2.

6.4 Activities and payments shall be discussed and agreed at the Contract Management Forum meetings at least annually.

7. LIABILITY AND INSURANCE

7.1 The Service Provider Organisation shall ensure that any Learners and/or Education Provider staff involved in Practice Learning activities shall have the benefit of the same liability and indemnity insurance cover including clinical negligence as does its own staff.

7.2 The Service Provider Organisation shall ensure that any Learners and/or Education Provider staff engaged in Practice Learning activities are included within the clinical governance arrangements of the Service Provider Organisation.

7.3 The Service Provider Organisation shall as far as is reasonably practicable and consistent with its own policies ensure that Education Providers' employees have the requisite honorary contracts, or equivalent arrangements, with the Service Provider Organisation to enable effective operation within the practice learning environment.

7.4 The Service Provider Organisation shall ensure that Education Providers' employees work under similar arrangements for liability and insurance as that provided for its own staff, and that those organisations which are not directly part of the Service Provider Organisation but provide Practice Learning deemed necessary by the Learners' Supervisor have the same standard of insurance cover as that of the Service Provider Organisation.

7.5 Whilst the Learner is legitimately on the Service Provider Organisation's premises or undertaking associated activities for the purpose of learning and/or delivery of services, it shall indemnify the Learner against any costs, claims or liabilities arising from neglect, acts or omissions save in relation to any Practice Learning Opportunity which is made in accordance with the terms of Clause 7.4 above.

7.6 For non-medical and undergraduate medical Learners, the Education Provider is contractually responsible for undertaking Occupational Health and enhanced Criminal Record Bureau (CRB), Independent Safeguarding Authority (ISA) or any successor organisation, checking processes for Learners undertaking Practice Learning Opportunities. For the avoidance of doubt no Learner shall enter the first placement without receipt by the Education Provider of the satisfactory clearances. In addition, the following form of words is included in the agreement for Education and Training between the SHA and the Education Provider : "*The Institution agrees that where it is found to be negligent in assessing any Student suitable for a practice placement, the Institution shall indemnify the Authority*

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against any costs, claims or other liabilities which the Authority incur". The Service Provider Organisation shall accept this process where it is satisfied that the requirements of its policy on disclosure checks are met.

7.7 For postgraduate medical Learners, the Service Provider Organisation is responsible for undertaking Occupational Health and enhanced Criminal Record Bureau (CRB), Independent Safeguarding Authority (ISA) or any successor organisation, checking processes for Learners undertaking Practice Learning Opportunities, or for ensuring that such checks have been undertaken and are still valid, where appropriate.

7.8 The Service Provider Organisation shall indemnify the SHA fully against all actions, costs, claims, demands and liability whatsoever arising under any statute or at common law which are directly attributable to the negligence or breach of terms of this Agreement by the Service Provider Organisation, its employees, agents or subcontractors, to property, real or personal and any injury to persons, including injury resulting in death arising out of or in the course of or in connection with the performance of, or failure to perform, or breach of any of its obligations or warranties under this Agreement.

7.9 The SHA shall indemnify the Service Provider Organisation fully against all actions, costs, claims, demands and liability whatsoever arising under any statute or at common law which are directly attributable to the negligence or breach of terms of this Agreement by the SHA, its employees, agents or subcontractors, to property, real or personal and any injury to persons, including injury resulting in death arising out of or in the course of or in connection with the performance of, or failure to perform, or breach of any of its obligations or warranties under this Agreement.

8. ASSIGNMENT AND SUB-CONTRACTING

8.1 The Agreement shall be binding upon and for the benefit of the successors in title of the Parties.

8.2 Save for an assignment by the Service Provider Organisation to a subsidiary as defined by Section 1159 Companies Act 2006 or a parent company which is permitted, the Service Provider Organisation may not assign, transfer, sub-contract or otherwise dispose of its rights or obligations under the Agreement in whole or in part without the written consent of the SHA which shall not be unreasonably withheld or delayed.

8.3 The SHA may, following the provision of three (3) months prior written notice to the Service Provider Organisation, assign, transfer, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this Agreement in whole or part with the written consent of the Service Provider Organisation which shall not be unreasonably withheld or delayed.

8.4 If this Agreement is assigned as detailed in Clauses 8.2 or 8.3 above both Parties shall enter into a Deed of Novation with the assignee, or such other document as the SHA may reasonably require, to give effect to such assignment and any novation will ensure that the assignee will be bound by the terms of this Agreement.

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8.5 Where the Service Provider Organisation commissions NHS healthcare services from non-public sector sub-contractors the Service Provider Organisation shall use their best endeavours to ensure that such subcontracted services shall be bound by the terms of this Agreement in line with the Service Provider Organisation.

9. FACILITIES

9.1 The Service Provider Organisation shall make available facilities as required to enable compliance with the accompanying Schedules to support Learners undertaking Practice Learning.

9.2 The Service Provider Organisation shall ensure that Learners have similar work facilities and amenities as those available to its employees.

9.3 The Service Provider Organisation will make available at each of the premises where there is a Practice Learning Opportunity, office space where Supervisors can meet with Learners either individually or in small groups in private.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies which the Parties may have, either Party may serve notice in writing on the other Party terminating this agreement, without liability to the other, forthwith or with effect from such date as may be specified in the notice if :

10.1.1 either Party has materially breached the terms of this Agreement and has failed to remedy that breach following the receipt of a Remedial Notice pursuant to Clause eleven (11) and once dispute resolution detailed in Clause thirteen (13) has been completed; or

10.1.2 the other party repeatedly breaches any of the terms of this Agreement 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 Agreement; or

10.1.3 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of Section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

10.1.4 the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or

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10.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or

10.1.6 an application is made to Court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or

10.1.7 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or

10.1.8 a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or

10.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or

10.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 10.1.1 to Clause 10.1.10 (inclusive); or

10.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

10.2 Without prejudice to any other rights or remedies which the parties may have, the SHA may terminate this Agreement without liability to the Service Provider Organisation immediately on giving notice to the Service Provider Organisation if the Service Provider Organisation (in the reasonable opinion of the SHA) fails at any time to meet any relevant quality standards or professional requirements in relation to the Services.

10.3 Force Majeure

10.3.1 The Party affected shall be excused performance of its obligations under the Agreement if performance of such obligations is delayed, hindered or prevented by an event beyond its reasonable control ("Force Majeure") provided the other Party has been notified in writing as soon as practicably possible of the cause and extent of such non-performance, of the date or likely date of commencement and the means proposed to be adopted to remedy or abate the Force Majeure.

10.3.2 Neither of the Parties to this Agreement shall be responsible to the other for any delay in performance or non-performance, due to any causes beyond the Party's reasonable control, but the affected Party shall promptly, upon the occurrence of any such cause has delayed or prevented its performance hereunder and thereafter each Party shall

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take all action within its power to comply with the terms of this Agreement as fully and promptly as possible.

10.3.3 If the Force Majeure in question prevails for a continuous period in excess of six (6) months after the date on which the Force Majeure begins, the affected party shall then be entitled to give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than twenty eight (28) days after the date on which the notice to terminate is given. Once the notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice.

10.4 The Service Provider Organisation may give notice in writing **("Late Payment Notice")** to the SHA if the SHA has failed to make any payments properly due to the Service Provider Organisation in accordance with Schedule 2 of this Agreement. The Service Provider Organisation shall specify in the Late Payment Notice, the payments that the SHA has failed to make in accordance with Schedule 2.

10.5 The Service Provider Organisation may, at least twenty eight (28) days after having served a Late Payment Notice, terminate this Agreement by a further written notice if the SHA has still failed to make payments properly due to the Service Provider Organisation, and that were specified in the Late Payment Notice served on the SHA.

10.6 In the event that both Parties agree that circumstances have changed such that continuation of the Agreement or part thereof is no longer appropriate the Agreement may be terminated by written agreement between the Parties.

11. REMEDIAL NOTICES AND BREACH NOTICES

11.1 Before issuing a notice to terminate this agreement pursuant to clause 10.0 above, either Party may serve on the other a notice requiring it to remedy any material breaches of the terms of this Agreement (a "Remedial Notice").

11.2 A Remedial Notice shall specify :

(a) details of the breach;

(b) the steps the Party receiving the Remedial Notice must take to the satisfaction of the other Party in order to remedy the breach; and

(c) the period during which the steps must be completed ("the Remedial Notice Period").

11.3 The Remedial Notice Period shall, be no less than twenty eight (28) days from the date that the Remedial Notice is given.

11.4 Where the Party issuing the Remedial Notice (the "Issuing Party") is satisfied that the other Party has not taken the required steps to remedy the breach by the end of the Remedial Notice Period, the Issuing Party may terminate this Agreement with effect from such date as the Issuing Party may specify in a further notice to the other Party.

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11.5 Where a breach of the terms of this Agreement has been committed and is not capable of remedy, either Party may serve notice on the other Party requiring it not to repeat the breach ("Breach Notice").

11.6 If, following a Breach Notice or a Remedial Notice, a Party :

(a) repeats the breach that was the subject of the Breach Notice or the Remedial Notice; or

(b) otherwise breaches this Agreement resulting in either a Remedial Notice or a further Breach Notice.

the Issuing Party may serve notice on the other Party terminating this Agreement with effect from such date as may be specified in that notice.

12. CONSEQUENCES OF TERMINATION

12.1 If, following early termination, there are any Learners who have not completed their programmes of education, the Agreement shall remain in full force and effect in relation to such Learners until they have completed such programmes through either successful completion, failure, referral without right to resubmit, withdrawal or transfer to another organisation. The Parties shall co-operate with each other to ensure that Learners currently on programmes shall have the opportunity to complete.

12.2 If the Service Provider Organisation is in breach of any obligation pursuant to this Agreement then the SHA may withhold or deduct monies which would otherwise be payable under the Agreement in respect of that obligation which is the subject of the default as detailed in Schedules 2a, 2b, 2c, 2d, 2e.

12.3 On termination of this Agreement for any reason, the Service Provider Organisation shall deliver to the SHA :

12.3.1 all copies of personal information and data related to trainees and all information and data provided by the SHA to the Service Provider Organisation for the purposes of this Agreement. The Service Provider Organisation shall certify to the SHA that it has not retained any copies of information or data.

13. DISPUTE AND ARBITRATION

13.1 Dispute Resolution

13.1.1 Where a Party is entitled to serve written notice on the other Party terminating this Agreement **("Termination Notice")**, the Issuing Party shall, in the notice served on the other Party specify a date on which the Agreement terminates that is not less than twenty eight (28) days after the date on which the issuing Party has served that notice on the other Party unless clause 13.1.2 applies.

13.1.2 This clause applies if the Issuing Party is satisfied that a period less than twenty eight (28) days is necessary in order to protect the safety of patients, the quality of services provided by the Service Provider

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Organisation, to minimise any material damage to its reputation, or protect itself from material financial loss.

13.1.3 In a case falling within Clause 13.1.1 where the exception in clause 13.1.2 does not apply, if the Party who has received the Termination Notice invokes the Dispute Resolution Procedure, as set out in Clause 13.2 below, before the end of the period of notice referred to in Clause 13.1.1, and it notifies the Issuing Party in writing that it has done so, this Agreement shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in Clause 13.1.4 below.

13.1.4 This Agreement shall only terminate pursuant to this Clause 13.1.4 if and when there has been a determination of the dispute and that determination permits the Issuing Party to terminate this Agreement or the Party who has received the Termination Notice ceases to pursue the Dispute Resolution Procedure, whichever is the sooner.

13.2 Dispute Resolution Procedure

13.2.1 All negotiations and proceedings connected with any dispute, claim or settlement arising out of or relating to this Agreement ("Dispute") shall be conducted in confidence and shall follow this Dispute Resolution Procedure. The Service Provider Organisation shall continue its performance of the provisions of this Agreement (unless the SHA requests in writing that the Service Provider Organisation does not do so).

13.2.2 Either Party must first call an extraordinary meeting of the Parties by service of not less than ten (10) Business Days' written notice to resolve any Dispute relating to this Agreement and each Party agrees to ensure that appropriate representatives, nominated by each Party attend such a meeting.

13.2.3 The nominated representatives of both Parties shall use all reasonable endeavours to resolve the Dispute. If the meeting fails to resolve the Dispute within ten (10) Business Days of its being referred to it, then the Dispute shall be referred to aboard director level meeting at which the Parties shall co-operate in good faith to resolve the Dispute as amicably as possible within ten (10) Business Days of the Dispute being referred to them.

13.2.4 If the negotiation referred to in Clause 13.2.3 does not resolve the matter in question in the allotted time then the Parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") model mediation procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties must give notice in writing ("a Mediation Notice") to the other requesting mediation of the Dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation if otherwise agreed by the Parties asking them to nominate a mediator. The mediation shall commence within fifteen (15) Business Days of the Mediation Notice

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being served. The Parties will co-operate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

13.2.5 The parties shall bear their own legal costs of this Dispute Resolution Procedure.

14. VARIATION

14.1 Any variation of the Agreement shall only be effective when agreed in writing and signed by or on behalf of the Director of Workforce and HR of the SHA and Chief Executive of the Service Provider Organisation. The Variation Deed shall be used to instruct such changes and the signed counterpart will be included at Schedule 1 of this Agreement.

15. CONFIDENTIAL INFORMATION

15.1 The Parties, including all their employees and agents, undertake to each other :

15.1.1 to keep all Confidential Information (including all portions and copies of such information) secret and confidential;

15.1.2 not, without the prior written consent of the other, to disclose or reveal Confidential Information (or any portion or copy of such information) to any person other than to such officers or employees to whom it is necessary to reveal such information for the furtherance of this Agreement or any other agreement between the Parties (whether written or oral);

15.1.3 not to use Confidential Information (or portion or copy of such information) other than in the furtherance of this Agreement or any other agreement between the Parties (whether written or oral);

15.1.4 not to make any copies of any document, drawing, facsimile transmission or any magnetic or electronic medium upon which Confidential Information is stored or comprising or containing (in whole or in part) any Confidential Information without the prior written consent of the other; and

15.1.5 to ensure that any Confidential Information received by it will be at all times within its possession or under its control.

16. NOTICE

16.1 Any notice to be served on either Party by the other shall by sent by recorded delivery post and shall be deemed to have been received three (3) Business Days after posting. Any notice should be addressed to the nominated representative for each organisation as detailed below :

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For the East Midlands Strategic Health Authority :

Director of Workforce & HR
East Midlands Strategic Health Authority
Octavia House,
Interchange Business Park,
Bostocks Lane,
Sandiacre,
Nottinghamshire
NG10 5QG

For (insert name and address of service provider)

17. DATA PROTECTION

17.1 In this Clause 17, the terms Personal Data, Data Subject, Data Controller, Information Commissioner, Health Record, Data Processor and Sensitive Personal Data have the meanings given in the Data Protection Act 1998 and processing, process and processed shall be construed accordingly.

17.2 The Service Provider Organisation and the SHA each warrant that it shall comply with the Data Protection Act 1998 including but not limited to the management and retention of any Personal Data.

17.3 The SHA and the Service Provider Organisation acknowledge and agree that the Service Provider Organisation is a Data Controller for Personal Data for those individuals whose data is processed as part of the Services.

17.4 To the extent that the Service Provider Organisation is acting as a Data Controller under this Agreement it shall, for those individuals whose data is processed as part of the Services provided, meet the requirements of Schedule 1, Part II Paragraph 2 of the Data Protection Act unless there is no legal obligation to provide such information :

17.4.1 deal with any queries about Personal Data promptly and within the timescale set within the Data Protection Act 1998, including those from the Information Commissioner in relation to any Personal Data held on its behalf by the SHA; and

17.4.2 respond at its own cost to any Data Subject request made by those individuals whose data is processed as part of the Services.

17.5 It acknowledges that in some instances the SHA may have cause to act as both Data Controller and Data Processor.

17.6 The Service Provider Organisation (as Data Processor) shall put in place :

17.6.1 appropriate technical and organisational measures for processing of Personal Data and against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the Personal

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Data processing facilities to be used to process the Personal Data, and that any persons whom it authorises to have access to the Personal Data shall respect and maintain all due confidentiality; a level of security programmes and procedures which reflect :

17.6.1.1 the unauthorised or unlawful possession of the Personal Data or the loss or destruction of or damage to the Personal Data; and

17.6.1.2 the state of technological development and the costs of implementing such programmes and procedures; and

17.6.1.3 as required by the Data Protection Act 1998, such security programmes and procedures which specifically address the nature of any Sensitive Personal Data.

To the extent that it is a Data Processor in respect of any Personal Data processed under this Agreement the Service Provider Organisation shall:

17.6.1.4 only process Personal Data as is necessary to perform its obligations under this Agreement and such data shall be held and processed only in accordance with relevant legislation; and

17.6.1.5 process the Personal Data only for such purposes as are instructed by the SHA. For the avoidance of doubt this is to include the use of anonymised data to produce statistical analysis.

17.7 The Service Provider Organisation shall not process any Personal Data outside the European Economic Area without the consent of the SHA.

17.8 The Service Provider Organisation shall indemnify the SHA against all costs, claims, damages, demands or expenses suffered or incurred by the SHA in connection with any claim by a third party that Personal Data has been lost, obtained, used or transferred by the Service Provider Organisation (other than in accordance with the terms of this Agreement) in breach of the Data Protection Act 1998 or the equivalent laws of the jurisdiction to which the Personal Data is transferred.

17.9 The SHA shall indemnify the Service Provider Organisation against all costs, claims, damages, demands or expenses suffered or incurred by the Service Provider Organisation in connection with any claim by a third party that Personal Data has been lost, obtained, used or transferred by the SHA (other than in accordance with the terms of this Agreement) in breach of the Data Protection act 1998 or the equivalent laws of the jurisdiction to which the Personal Data is transferred.

18. FREEDOM OF INFORMATION

18.1 The Parties each acknowledge that the other Party to this Agreement is subject to the requirements of the Code of Practice on Government Information and the Freedom of Information Act 2000 **("the FOIA")** and shall assist and co-operate

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with the other Party to enable that Party to comply with its Disclosure obligations. Accordingly the Parties agree that :

18.1.1 this Agreement is subject to the obligations and commitments of under the Code of Practice on Openness in the NHS and the FOIA as may be amended from time to time and updated;

18.1.2 where either Party is managing a Request for Information, it shall only be obliged to consult with the other Party in accordance with any code of practice issued under section 45 of the FOIA and from time to time in force; and

18.1.3 where a Request for Information is received by the Service Provider Organisation, it will transfer the Request for Information to its FOIA responsible officer as soon as practicable and in any event within time to ensure that any Request for Information can be completed within the legally obliged timescale.

18.2 The Parties' FOIA responsible officers shall be jointly responsible for determining whether any Commercially Sensitive Information should be disclosed in response to Requests for information, and the Party having received the FOIA request shall use all reasonable endeavours to advise the other Party of such Request for Information as soon as reasonably possible and take any representations the other Party may make into account when determining whether the Commercially Sensitive Information should be disclosed.

18.3 The Parties shall use all reasonable endeavours to assist each other in complying with such obligations as may be imposed upon them by the FOIA including :

18.3.1 providing all necessary assistance to the Party having received a request under the FOIA **("the Receiving Party")** in complying with any Request for Information under the FOIA within the time for compliance set out in section 10 of the FOIA;

18.3.2 processing information provided by the other Party in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct issued under section 46 of the FOIA; and

18.3.3 providing the Receiving Party with a copy of all information in its possession or power, in the form that the Receiving Party requires, as soon as practicable and in any event within time to ensure that any Request for Information can be completed within the legally obliged timescale.

19. INFORMATION GOVERNANCE

19.1 The Service Provider Organisation will ensure that it meets the requirements of it outlined within the Connecting for Health Statement of Compliance identified within the Information Governance toolkit.

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20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

20.1 Save for Learners, a person who is not a party to the Agreement shall not have the right to enforce any terms of it which confer a benefit on him.

21. HUMAN RIGHTS ACT 1998

21.1 The Parties agree to observe and comply with their obligations under the Human Rights Act 1998.

22. EQUALITY ACT 2010

22.1 The Parties agree to observe and comply with their obligations under the Equality Act 2010.

23. INTELLECTUAL PROPERTY

23.1 The SHA acknowledges that all legal and beneficial interest in any intellectual property rights and other similar rights in any document, information, report, licence, text, graphics, data, computer programme, website or electronic media, and any other materials or thing, and any and all works which are developed or created by the Service Provider Organisation are, and shall remain, the property of the Service Provider Organisation.

23.2 The Service Provider Organisation acknowledges that all legal and beneficial interest in any intellectual property rights and other similar rights in any document, information, report, licence, text, graphics, data, computer programme, website or electronic media, and any other materials or thing, and any and all works which are developed or created by the SHA are, and shall remain, the property of the SHA.

23.3 The Service Provider Organisation and the SHA each acknowledges that all legal and beneficial interest in any intellectual property rights and other similar rights in any document, information, report, licence, text, graphics, data, computer programme, website or electronic media, and any other materials or thing, and any and all works which are developed or created jointly by the Service Provider Organisation and the SHA whilst giving effect to this Agreement are, assigned to be the property of the Service Provider Organisation.

23.4 Each Party shall have the irrevocable right free of charge to use such jointly developed or created property during the operation of this agreement for the purposes of fulfilling their respective obligations under this Agreement only. Neither Party shall permit a third party to use such jointly developed or created property without the prior written consent of the other, which shall not be unreasonably withheld or delayed.

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23.5 Any income which is derived from the use of such jointly developed or created property during the operation of this Agreement shall be divided equally between the Parties and thereafter shall be passed in its entirety to the Service Provider Organisation.

23.6 In the event that the Service Provider Organisation reasonably requires the use of any intellectual property rights and other similar rights of the SHA in order to carry out its obligations pursuant to this Agreement, the SHA will grant to the Service Provider Organisation as soon as reasonably practicable a royalty free non-exclusive licence to use such rights during the operation of this Agreement.

24. HEALTH AND EDUCATION STRATEGIC PARTNERSHIPS

24.1 Both Parties will be committed to fully engaging with other partners in effective local strategic planning and joint action planning across the education and health and social care sectors.

24.2 The Service Provider Organisation will use all reasonable endeavours to meet the responsibilities as detailed in the Service Level Agreement between the SHA and Local Health Communities for the relocated functions of the Local Health Communities. Failure to do so will be considered a breach of this Agreement.

25. SHA OBLIGATIONS

25.1 The SHA undertakes to discuss issues arising from the management of this Agreement as appropriate throughout the year; to work in partnership with the Service Provider Organisation to achieve the objectives set out herein; and to pay invoices from the Service Provider Organisation regularly, subject to quality standards as set out in Schedules 4a, 4b, 4c, 4d and 4e being adhered to.

25.2 The SHA shall in performing its NHS functions, have regard to the NHS Constitution.

26. COUNTERPARTS

26.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.

27. PREVAILING TERMS

27.1 For the avoidance of doubt, where there is any conflict between any terms of any Appendix, Schedule or Annex to this Agreement and Section 1 of this Agreement, the content of Section 1 of this Agreement shall prevail.

28. PREVIOUS CONTRACTS

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28.1 The Agreement effected by the signing of this Learning Development Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior negotiations, representations or understandings whether written or oral.

Signed on behalf of	**Signed on behalf of**
The SHA	**The Service Provider Organisation**
Signature ……	Signature ……
Full Name ……	Full Name ……
Position : Director of Workforce & HR	Position : Chief Executive
Date ……	Date ……..

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