



**RESTATED RULES FOR INDEPENDENT SECTOR PARTICIPANTS IN THE  
INDEPENDENT SECTOR EXTENDED CHOICE NETWORK TO REFLECT THE CURRENT  
AMENDMENTS TO THE RULES AS AT 31 MARCH 2009**

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## **PARTICIPANTS IN THE INDEPENDENT SECTOR EXTENDED CHOICE NETWORK - RULES**

### **PURPOSE AND STATUS**

- A. The purpose of the Extended Choice Network is to extend the choice available to an NHS patient as to the provider of their clinical care and the facility at which such care is provided.
- B. This has been identified as an important part of HM Government's programme of investment and reform with the aim of providing a more responsive health service, offering faster access to high quality services and, in particular, reducing patient waiting times from GP referral and extending patient choice.
- C. The Authority invited tenders from the independent sector for the participation in the Extended Choice Network. Following the tender process, certain Providers, have been selected for membership of the IS ECN.
- D. These Rules are legally binding on every provider who provides treatment as part of, or otherwise accepts an appointment to, the IS ECN.

### **RULES**

#### **PART A: MEMBERSHIP AND STATUS**

##### **1. PARTICIPATION IN THE IS ECN**

- 1.1 A Provider may only participate in the IS ECN if the Authority and the Provider have duly executed a Membership Agreement and the Provider fulfils the following Membership Conditions:
  - (a) the Provider must hold Healthcare Commission Registration so that it is permitted to provide Appointed Services in respect of at least one Clinical Service and has at least one Approved Facility;
  - (b) the Provider must fulfil in full the IM&T Requirements; and
  - (c) the CNST Administrator must have approved the Provider (and its Approved Sub-Contractors) for the purposes of CNST.
- 1.2 Participation in the IS ECN is subject to the terms and conditions set out in these Rules which shall form a contract binding on the Provider and the Authority.
- 1.3 During the Membership Period, the Provider is entitled to participate in the IS ECN by making available Appointed Services through the IS ECN.
- 1.4 Appointed Services made available through the IS ECN will be included on the Choose and Book Secondary Care Menu.
- 1.5 Purchasing Authorities will be encouraged (but will not be required) by the Authority to include Appointed Services made available through the IS ECN on their respective Choose and Book Local Menus. The inclusion of a Provider on a Purchasing Authorities Choose and Book Local Menu is at each at Purchasing Authorities' sole discretion.
- 1.6 As a member of the IS ECN the Provider shall at all times comply with:
  - (a) the Service Standards set out in clause 5 of the Terms of Provision;

- (b) the IM&T Requirements;
- (c) the Information Requirements;
- (d) the Marketing Guidelines; and
- (e) any instruction issued by the Authority to the Provider in respect of the inclusion of the Appointed Services on, or the removal of the Appointed Services from, the Choose and Book Secondary Care Menu.

1.7 Participation in the IS ECN does not:

- (a) entitle the Provider to receive any particular or minimum income or level of Valid Bookings from the Authority, Purchasing Authorities or otherwise; or
- (b) commit the Authority (or any Purchasing Authority) to acquire any Appointed Services exclusively from the Provider.

1.8 The Provider shall, through the IS ECN, provide only Appointed Services at an Approved Facility. The Provider shall not at any time or for any reason provide Clinical Services through the IS ECN for which it does not hold or has had suspended its Healthcare Commission Registration.

1.9 The Provider shall not provide Appointed Services through the IS ECN:

- (a) that are within the Procedure Exclusion Group; or
- (b) in respect of patients that are in the Patient Exclusion Group.

1.10 Participation in the IS ECN is separate from any Other Clinical Arrangements which will be governed by separate rules or contracts.

1.11 Where any Activity could be provided under any Other Clinical Arrangement to which the Provider is a party the Provider agrees, and shall ensure, that such Activity shall be provided under such Other Clinical Arrangement and shall not be provided as part of the IS ECN.

1.12 Without prejudice to Rule 1.11, if any IS ECN Conduct provided at a facility as part of the IS ECN in accordance with these Rules is the same (in all material respects) as any Other Contracted Conduct that may be provided at that facility under any Other Clinical Arrangement, then:

- (a) the Provider shall in relation to the relevant Other NHS Party waive its right to payment arising due to any income guaranteed to the Provider that has not been utilised to deliver services under that Other Clinical Arrangement by the amount payable to the Provider by the Authority or the relevant Purchasing Authority (as the case may be) in respect of that IS ECN Conduct; and
- (b) the Provider agrees that the relevant Other NHS Party shall have the right to enforce and to enjoy the benefit of this waiver notwithstanding that such Other NHS Party may not be a party to the Membership Agreement or to the relevant Individual Services Contract.

1.13 The Provider acknowledges and accepts that the Authority may authorise additional providers to participate in the IS FCN who satisfy the qualifying requirements set out in Rule 1.1, and agree to abide by the IS FCN Membership Rules.

## 2. **SUSPENSION**

- 2.1 If the Provider becomes aware that a Service Issue Event or a Suspension Event has occurred it shall immediately provide written notice to the Authority setting out the details of any such Service Issue Event or a Suspension Event.
- 2.2 Immediately a Service Issue Event occurs the Provider's IS ECN Participation shall be suspended automatically unless and until expressly instructed otherwise in writing by the Authority. Any such automatic suspension shall be confirmed by notice in writing from the Authority to the Provider confirming to the Provider the details of the suspension. For the avoidance of doubt suspension is automatic on the occurrence of the Service Issue Event and shall not be conditional upon nor be triggered by the service of such notice of confirmation of suspension.
- 2.3 If a Suspension Event occurs the Authority may immediately suspend the Provider from the IS ECN for all aspects of the Provider's IS ECN Participation or in relation only to:
  - (a) certain Appointed Services;
  - (b) certain Purchasing Authorities;
  - (c) certain Approved Facilities;
  - (d) certain Approved Sub-Contractors.
- 2.4 The Authority may suspend the entire IS ECN if it considers expenditure by the Authority and the Purchasing Authorities on services provided through the IS ECN in a Financial Year has exceeded £150m and is likely to exceed £200m.
- 2.5 Any suspension pursuant to Rules 2.3 or 2.4 shall be initiated by written notice from the Authority to the Provider advising the Provider that it is suspended and the details of the suspension.
- 2.6 During a Suspension Period the Provider shall:
  - (a) immediately and diligently comply with all Suspension Restrictions; and
  - (b) continue to provide Appointed Services in accordance with Valid Bookings or Individual Services Contracts in place prior to the beginning of the Suspension Period provided always that:
    - (i) the Suspension Restrictions do not prohibit it from doing so;
    - (ii) those Appointed Services are not related to, associated with or affected by a Service Issue Event; and
    - (iii) doing so will not in any way contravene Rule 1.8;
  - (c) subject to Rules 2.6(a) and 2.6(b), immediately take all steps required to suspend its participation in the IS ECN including taking all reasonable steps available to it to remove all of its Appointed Services from the Choose and Book Secondary Care Menu.
- 2.7 If a Provider is suspended any Suspension Period or Suspension Restrictions applicable to that Provider may be varied at any time by further written notice to the Provider from the Authority.
- 2.8 The Authority may take all necessary steps to enforce any suspension of the Provider and shall have no liability to the Provider whatsoever arising from any suspension of the Provider for whatever reason.

### 3. **TERMINATION**

- 3.1 The Provider's IS ECN Participation shall at all times be conditional upon the Provider continuing to fulfil the Membership Conditions throughout the Membership Period.
- 3.2 The Provider's IS ECN Participation will expire automatically on the Longstop Date.
- 3.3 The Authority may terminate the Provider's IS ECN Participation before the Longstop Date by immediate written notice if:
- (a) a Service Issue Event occurs;
  - (b) a Suspension Event occurs;
  - (c) the Provider breaches a material provision of these Rules that is either not capable of being remedied or (if it is capable of being remedied) is not remedied within 10 Business Days of the Authority requiring the Provider to remedy it;
  - (d) the Provider materially breaches the terms of any Individual Services Contract and such breach is either not capable of being remedied or (if it is capable of being remedied) is not remedied within 10 Business Days of the Provider being notified of the breach;
  - (e) the Provider commits persistent breaches of one or more Individual Services Contracts;
  - (f) the Provider becomes Insolvent.
- 3.4 The Authority may terminate the Provider's IS ECN Participation before the Longstop Date by not less than one calendar months written notice, with termination not to take effect before 1 March 2008 or the commencement of Free Choice (whichever is earlier).
- 3.5 The Provider may terminate its IS ECN Participation before the Longstop Date:
- (a) if the Authority amends these Rules in accordance with Rule 29, by written notice to the Authority served no later than 10 Business Days prior to the Rule Change Date with termination to take effect on that Rule Change Date;
  - (b) if there is any material change to the Service Charges, by written notice to the Authority served no later than 10 Business Days prior to the Charge Change Date with termination to take effect on that Charge Change Date;
  - (c) by not less than 40 Business Days written notice, with termination not to take effect before the end of the Initial Period.
4. **ERROR! BOOKMARK NOT DEFINED. CONSEQUENCES OF TERMINATION**
- 4.1 Termination of the Provider's IS ECN Participation does not affect:
- (a) obligations of the Provider under any Individual Service Contract unless that is specifically provided for in the relevant notice of termination;
  - (b) rights and liabilities which have accrued before termination; or
  - (c) the enforceability of this Rule 4 and Rules 10, 15 and 18 or any other provisions of these Rules intended to remain in force after its termination
- 4.2 In particular, without limitation, following termination the Provider shall provide all Appointed Services to a patient in respect of a Valid Booking in accordance with the relevant Individual Service Contract subject always to the requirement that:

- (a) these Rules shall continue to apply in respect of the performance of the relevant Individual Service Contracts; and
  - (b) the Provider must continue to fulfil the Membership Conditions at all times during the term of the relevant Individual Service Contract.
- 4.3 Save only to the extent necessary for the Provider to comply with its obligations pursuant to Rules 4.1 and 4.2 (in respect of which this Rule shall be deemed to apply on satisfaction of such obligations), on termination of the Provider's IS ECN Participation:
- (a) the Provider shall immediately take all steps required to end its participation in the IS ECN including taking all reasonable steps available to it to remove all of its Appointed Services from the Choose and Book Secondary Care Menu;
  - (b) any express and implied licences granted to the Provider as a member of the IS ECN, under these Rules or otherwise, to use any Intellectual Property of the Authority or any Purchasing Authority will end immediately;
  - (c) the Provider must immediately return to the Authority (in accordance with its instructions) or destroy at the Authority's request:
    - (i) all the property in its possession or under its control that belongs to or was provided to it by or on behalf of the Authority or the Purchasing Authorities;
    - (ii) all copies of any materials and records of any kind that are in its possession or under its control (and in any medium) that contain any Confidential Information of the Authority or Purchasing Authority except that the Provider may retain a copy of any Confidential Information that it reasonably requires for its accounting purposes or to comply with any Applicable Laws;
  - (d) the Provider must immediately return to the relevant Purchasing Authority, or its designated nominee, all original Patient Information (and in each case any copies).

## **PART B: PROVISION OF SERVICES**

### **5. ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED.SERVICE STANDARDS**

- 5.1 In addition to its obligations under each Individual Service Contract, the Provider shall be responsible to the Authority for providing all Appointed Services in accordance with the relevant Individual Service Contract and in particular, without limitation, the requirements of Clauses 4 and 5 of the Terms of Provision.
- 5.2 Time is of the essence as regards the Provider's obligations under these Rules
- 5.3 Where an Activity Plan has been agreed for an Approved Facility, the Provider shall manage the provision of the Services at that Approved Facility in accordance with the Activity Plan so as to meet the 18 Weeks Referral-to-Treatment Target and shall comply with the 18 Week Clock and the 18 Week Pathway, having due regard to the 18 Week Guidance and the Authority may exercise its rights pursuant to Rule 2.
- 5.4 The Provider shall not discriminate between patients on the grounds of gender, age, ethnicity, disability, religion, sexual orientation or any other non-medical characteristics, and shall provide appropriate assistance for patients who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments). The Provider shall complete an Equality Impact Assessment for at least 1 Approved Facility, and every Approved Facility where the value of Activities under Individual Services Contracts exceed £100,000 in any Contract Month, and shall



make such Equality Impact Assessments available to the Authority, and any Purchasing Authority, on request.

- 5.5 The Authority may consider a request from the Provider to deliver Activities from non-Approved Facilities, providing that such Activities may not extend to any Clinical Services other than outpatient appointments, may only be carried out at facilities which meet all relevant Service Consents, including any required Healthcare Commission approval, and the delivery of such Activities is in accordance with any approval or conditions of the CNST Administrator.

## 6. **CNST COVERAGE**

- 6.1 Without prejudice to Rule 10, the Provider shall comply with the CNST Conditions.
- 6.2 Subject to Rule 6.3, the Authority (as agent for the relevant CNST Member) shall indemnify and keep the Provider and each Provider Party and Service Staff indemnified at all times from and against all damages, costs or other sums paid or payable by (as the case may be) the Provider and any Provider Party and any Service Staff to or in respect of any Patient, his dependents or estate in consequence of or in connection with any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence or alleged medical or clinical negligence on the part of the Provider or any Provider Party or Service Staff in connection with any IS ECN Conduct.
- 6.3 The obligation on the part of the Authority pursuant to Rule 6.2 will not apply:
- (a) where the Provider has failed to comply with any of the CNST Conditions or Rule 22 to the extent that failure adversely affects the availability of benefits to the relevant CNST Member or the exercise of the discretion of the CNST Administrator to make available any such benefits to the relevant CNST Member pursuant to the CNST Requirements in respect of the claim by or on behalf of a Patient, his dependents or estate referred to in Rule 6.2; and
  - (b) in relation to any claim in respect of which the Provider is obliged to indemnify any the Authority and/or the Purchasing Authority pursuant to Rule 7(b)(iii)(2).

## 7. **PROVIDER INDEMNITY**

Save in each case to the extent that Rule 6.2 applies, the Provider shall indemnify and keep the Authority and the relevant Purchasing Authority fully indemnified against all Direct Losses incurred or suffered by each of them as a result of or in connection with any and all:

- (a) failures to provide Appointed Services in accordance with these Rules; and
- (b) third party claims against the Authority or relevant Purchasing Authority relating to any service the Provider provides (or purports to provide) pursuant to IS ECN Participation whether or not in breach of these Rules including (without limitation):
  - (i) as a result of or in connection with any medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in relation to the provision of any clinical services other than the IS ECN Conduct; and/or
  - (ii) any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in connection with any IS ECN Conduct where the Provider has failed to comply with any of its obligations under the CNST Conditions or Rule 22 to the extent that such failure adversely affects the availability of benefits

to the relevant CNST Member or the exercise of the discretion of the CNST Administrator to make available any such benefits to the relevant CNST Member pursuant to the CNST Requirements in respect of the claim by or on behalf of a Patient, his dependents or estate referred to in this Rule 7(b)(ii); and/or

- (iii) any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in connection with any CNST Activity, brought in, or otherwise made subject to the jurisdiction of a court in, the United States of America:
  - (1) on the grounds that the Services or any part of them were carried out in the United States of America, including, for the avoidance of doubt, the export of Data or Personal Data to the United States of America; or
  - (2) on the grounds of the place of incorporation or registration of the Provider or any Provider Party or any Associate of the Provider or any Provider Party; or
  - (3) on any other grounds except those of the citizenship, residence or domicile of the claimant.

8. **ERROR! BOOKMARK NOT DEFINED.ERROR! BOOKMARK NOT DEFINED. BOOKING AND INDIVIDUAL SERVICE CONTRACTS**

8.1 The Provider shall:

- (a) comply with the Booking Procedures; and
- (b) accept all Valid Bookings; and
- (c) accept the transfer to an Approved Facility of Patients from Secondary Care Providers where the Purchasing Authority has approved the transfer of the Patient to the Provider in writing, the Provider has received the relevant Minimum Dataset from the Secondary Care Provider, the Activity to be transferred to the Approved Facility falls within the scope of an agreed Activity Plan and the transfer allows at least 8 weeks for the Provider to treat the Patient before the expiry of the 18 Week Referral to Treatment Target; and
- (d) use all reasonable efforts to accept the transfer to an Approved Facility of Patients from Secondary Care Providers where the Purchasing Authority has approved the transfer of the Patient to the Provider in writing, the Provider has received the relevant Minimum Dataset from the Secondary Care Provider, the Activity to be transferred to the Approved Facility falls within the scope of an agreed Activity Plan where there is less than 8 weeks for the Provider to treat the Patient before the expiry of the 18 Week Referral to Treatment Target.

For the avoidance of doubt, transfers made in accordance with Rule 8.1(c) and 8.1(d) will be treated as Valid Bookings for the purpose of the Rules, and any Individual Services Contract.

8.2 The placing of a Valid Booking for a Slot made available by the Provider shall create an Individual Service Contract in respect of that Slot and the relevant Patient Services.

8.3 A Valid Booking or Activity may be cancelled at any time with or without notice by the Authority, the relevant Purchasing Authority or the Patient without liability.

- 8.4 If the Patient cancels or does not attend a Valid Booking or Activity the Provider shall inform the Purchasing Authority within 24 hours of that cancellation or non-attendance.
- 8.5 Unless the Provider is instructed otherwise by the Authority or by the Purchasing Authority or the relevant Individual Service Contract is terminated, if either the Authority, the Purchasing Authority or the Patient cancels, or a Patient does not attend, a Valid Booking or Activity the Provider shall use its reasonable endeavours and take all reasonable steps to reschedule the Valid Booking or Activity with the Patient within such period that is consistent with any 18 Weeks Referral-to-Treatment Target from time to time.
- 8.6 Subject to Rules 2, 3 and 5 a Provider may only cancel a Valid Booking or Activity by reasonable notice to the Patient and relevant Purchasing Authority only if:
- (a) it is reasonably justifiable in the relevant Patient's interest to do so or if it is reasonably necessary to do so in order to enable the Provider to attend to a life threatening emergency (For the avoidance of doubt, a Provider is not permitted to cancel a Valid Booking or Activity in order to provide treatment to a non-NHS patient in place of that Valid Booking or Activity other than in the case of a life threatening emergency); and
  - (b) the Provider also uses its reasonable endeavours and takes all reasonable steps to reschedule the Valid Booking or Activity with the Patient within such period that is consistent with any 18 Weeks Referral-to-Treatment Target and supports the Authority, the Purchasing Authority and local health economy in achieving any relevant 18 Weeks Referral-to-Treatment Target.
- 8.7 No amount (including any Service Charge) shall be payable in respect of:
- (a) any cancelled Valid Booking or Activity not performed by the Provider regardless of reason, including but not limited to a Patient failing to attend in accordance with a Valid Booking without any notice;
  - (b) any Slot or other Activity which the Provider may undertake in breach of clause 4.1(b) of the Terms of Provision and in particular, without limitation, any initial diagnostic outpatient assessment where any First Outpatient Assessment has already taken place and the Provider has been:
    - (i) advised that the First Outpatient Assessment has occurred; and
    - (ii) provided with the results of that First Outpatient Assessment;
  - (c) any Activity provided in breach of Rules 1.8 or 1.9 or 1.11.
- 8.8 The Provider shall at all times perform its obligations under the Rules and the Individual Service Contracts in a manner that is consistent with any 18 Weeks Referral-to-Treatment Target and supports the Authority, the Purchasing Authority and the local health economy in achieving any relevant NHS waiting times.
9. **SERVICE CHARGE**
- 9.1 The Provider shall supply the Appointed Services in respect of the relevant Patient in accordance with the relevant Individual Service Contract and for the relevant Service Charge and CQUIN Payment.
- 9.2 The Authority shall use its reasonable endeavours to notify the Provider of any material amendments to the Service Charges at least 20 Business Days prior to the Charge Change Date. The Service Charges that apply to an Individual Service Contract shall be those Service Charges in effect at the date of the relevant Valid Booking.

- 9.3 Other than in respect of the Service Charges and CQUIN Payment payable in accordance with Individual Service Contracts and without prejudice to the express obligations of the parties set out in these Rules, the Authority and the Purchasing Authority shall not be liable to pay any amount to the Provider in connection with the provision of the Appointed Services or otherwise pursuant to the Provider's IS ECN Participation.
- 9.4 It is anticipated that the supply of Appointed Services under an Individual Services Contract in accordance with these Rules may be VAT exempt under the provisions of Group 7 to Schedule 9 of the 1994 VAT Act. If the Provider incurs irrecoverable VAT (for whatever reason) there will be no revision to the Service Charge or any additional amount payable for the Appointed Services.
- 9.5 The Provider shall provide invoices and receive payment for Patient Services performed by it:
- (a) in accordance with the relevant Individual Services Contract; and
  - (b) following written notice from the Authority, also in accordance with any Central Payment Arrangements.
- 9.6 Payment of the relevant Service Charge shall be made in accordance with the relevant Individual Service Contract, providing that a Purchasing Authority shall be entitled to withhold the relevant Service Charge and any CQUIN Payment until receipt by it of the information required under paragraph 3 of Schedule 5 (Reporting Requirements) in respect of the Patient Services delivered by the Provider under the relevant Individual Service Contract.
- 9.7 Without prejudice to its other rights and remedies the Authority may:
- (a) set-off and deduct from the amounts due from the Authority to the Provider any amounts owed to the Authority by the Provider (whether liquidated or not) irrespective of whether the liability to pay those amounts arose under or in connection with the IS ECN; or
  - (b) by notice to the Provider, assign to any Purchasing Authority its rights in respect of any amounts owed to the Authority by the Provider (whether liquidated or not) irrespective of whether the liability to pay those amounts arose under or in connection with the IS ECN, and that Purchasing Authority may exercise any right of set-off or deduction it may have against the Provider in respect of those amounts.
- 9.8 All invoices and Monthly Activity Reports required to be sent to the Purchasing Authorities in accordance with the Terms of Provision shall be copied to the Authority. The Provider shall ensure that it has accurately and diligently completed the Monthly Activity Report for each Approved Facility setting out details of all Appointed Services which it has provided in the relevant month through its IS ECN Participation and details of the invoicing of such Appointed Services.

## **PART C: OTHER RULES**

### **10. OTHER INSURANCE**

- 10.1 In respect of all Appointed Services supplied by the Provider, the Provider shall at all times during the Membership Period have in place in respect of legal liability arising out of or in relation to any IS ECN Conduct as follows:
- (a) all insurance required as part of its Healthcare Commission Registration;
  - (b) all other insurance which it is required to have in place by any Applicable Laws.

- 10.2 The insurance required by Rule 10.1 shall be in a form (including as to terms and deductibles) and with companies acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed).
- 10.3 The Provider will, whenever requested by the Authority, produce to the Authority a copy of the policies and the receipts for payment of the current premiums in respect of the insurance required by Rule 10.1.

**11. CONTINGENCY PLANNING AND DISASTER RECOVERY**

The Provider must maintain all of its Approved Contingency Plans and shall implement those plans immediately where necessary.

**12. ERROR! BOOKMARK NOT DEFINED. SERVICE STAFF**

- 12.1 The Provider shall be the employer or contractor of all Service Staff involved in any IS ECN Conduct and shall be responsible at all times for all liabilities in respect of them including, but not limited to, their remuneration, any liability for taxation and social security contributions (including the making of proper monthly withholdings of the same and accounting for the same to the relevant tax authority by the relevant due dates) and all health and safety and related matters in connection with any IS ECN Conduct.

- 12.2 Subject to Rule 7, the Provider shall indemnify and keep indemnified the Authority and all Purchasing Authorities on demand from and against all Direct Losses they suffer or incur as a result of:

- (a) any Service Staff making a claim against the Authority or any of the Purchasing Authorities or breaching any rules, regulations or codes of conduct applicable to them or otherwise causing loss, personal injury, death or damage to any property of the Authority or any of the Purchasing Authorities or of any Third Party; or
- (b) any person making a claim against the Authority or any of the Purchasing Authorities as a consequence of the conduct of any Service Staff or in relation to any income tax or national insurance contributions arising from the remuneration paid by the Provider to the Service Staff.

- 12.3 If, as a result of a Provider ceasing to participate in the IS ECN (for whatever reason) or the termination of the provision of the Clinical Services or performance of any other services provided pursuant to these Rules or any Individual Service Contract, or for any other reason by operation of the Employment Transfer Regulations the contract of employment of any Service Staff has effect or is alleged to have effect, as if originally made between the Authority or any of the Purchasing Authorities and any such Service Staff then:

- (a) the Authority or any Purchasing Authority (as the case may be) may, within one month of becoming aware of the application, or alleged application, of the Employment Transfer Regulations to any such contract, give notice to terminate such contract (being the minimum notice to which they are entitled by law); and
- (b) the Provider shall indemnify and keep the Authority and/or any relevant Purchasing Authorities indemnified on demand from and against all Direct Losses incurred or suffered by Authority or any such Purchasing Authority arising out of or in connection with such transfer, alleged transfer or such termination and against any and all sums payable to or in relation to such Service Personnel in respect of their employment after the date of the relevant transfer in respect of such Service Personnel to the date of such termination of their contract of employment.

- 12.4 Without prejudice to Rule 5, a Provider must have in place systems which, in the reasonable opinion of the Authority, are appropriate for overseeing the recruitment,

induction and mentoring of its clinical staff, which shall ensure that clinical staff (including, without limitation, surgeons and anaesthetists) in a speciality area will be recruited, inducted and mentored by senior clinical staff in the same speciality area.

- 12.5 If requested by either the Authority or any Purchasing Authority, the Provider shall (in accordance with the requirements set out in that request) promptly (and in any event within 5 Business Days of the request) provide to the Authority or the relevant Purchasing Authority (as the case may be) with full details of its recruitment and staffing policies, strategies, practices and mobilisation plans and details of all Service Staff relevant to its provision of Appointed Services pursuant to these Rules or any Individual Services Contract.

**13. STATUS CERTIFICATE**

- 13.1 During the Membership Period, the Provider shall, at intervals of 6 calendar months, accurately and diligently complete and send to the Authority a Status Certificate confirming the status of its IS ECN Participation.

- 13.2 By sending the Status Certificate to the Authority the Provider warrants and represents to the Authority that the matters set out in the Status Certificate are true and correct in all respects.

**14. RECORDS, INSPECTION AND AUDIT RIGHTS**

- 14.1 Without prejudice to the Information Requirements, the Provider must keep clear, accurate, complete and up to date records and information relating to:

- (a) all matters relating to the provision of Appointed Services for which records must be kept under the Applicable Laws; and
- (b) the performance of its obligations under these Rules including appropriately detailed information regarding all enquiries, claims, settlements, payments, compensation, and systems processes.

- 14.2 The Provider shall keep and retain the records and information referred to in this Rule to the same standards as would be required of a reasonable person providing the Appointed Services.

- 14.3 The Provider must on reasonable notice from the Authority:

- (a) make available to the Authority and its representatives any records and information belonging to the Provider and/or any Third Party involved in the provision of the Appointed Services which may be relevant in confirming:
  - (i) the Provider's compliance with its obligations under these Rules;
  - (ii) the calculation of any sums payable in accordance with these Rules; or
  - (iii) clinical quality indicators including returns to theatre rates, readmission rates, patient satisfaction rates and deep vein thrombosis and pulmonary embolism rates; and
- (b) give the Authority and its representatives access to the Provider's premises and those of any Third Parties involved in the provision of the Appointed Services in order to confirm the Provider's compliance with its obligations under these Rules.

- 14.4 The Provider must ensure that its staff and those of any Third Party involved in provision of the Appointed Services are (in so far as is reasonable) made available to assist the Authority in the exercise of its rights under Rule 14.3.

14.5 The Provider shall promptly notify the Authority in writing of any inspection or visit to an Approved Facility by the Healthcare Commission; the availability of a report by the Healthcare Commission following any such inspection; any change to, breach of, termination or suspension of or actual or threatened enforcement action in respect of the Healthcare Commission Registration of any Approved Facility in whole or in part

14.6 The Provider shall adopt appropriate policies and procedures to report any Serious Untoward Incident in accordance with any policy of a Purchasing Authority which may include completion of an electronic incident form on STEIS..

## 15. **DISPUTES**

15.1 All disputes arising out of or in connection with the Provider's IS ECN Participation and these Rules shall be referred in the first instance to senior managers from each of the parties who have authority to conclude a settlement and those senior managers should be at a higher level of management than the individuals with day to day responsibility for the Provider's IS ECN Participation and compliance with these Rules.

15.2 If any dispute cannot be resolved by senior managers pursuant to Rule 15.1, the parties may refer the dispute to mediation by an independent mediator agreed by the parties. In the absence of agreement the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR). The aim of the mediator shall be to resolve the dispute within the shortest possible time commensurate with the nature of the dispute and involving the least possible cost.

15.3 The provisions of Rules 15.1 and 15.2 shall not prevent either party from bringing legal proceedings at any time in order to preserve any legal rights or remedies in relation to the subject matter of the dispute.

## 16. **ERROR! BOOKMARK NOT DEFINED. JOINT AND SEVERAL**

If the Provider consists of more than one entity, the liability of each Provider for the performance of its obligations in accordance with these Rules shall be joint and several.

## 17. **ERROR! BOOKMARK NOT DEFINED. INTELLECTUAL PROPERTY**

17.1 The Provider warrants that it has the right to provide the Appointed Services and that the supply and use of the Appointed Services will not infringe the Intellectual Property of any Third Party.

17.2 The Provider shall not use any Intellectual Property of the Authority or any Purchasing Authority, save only to the extent that such use may be necessary specifically to comply with its obligations under these Rules or any Individual Services Contract.

17.3 For the avoidance of doubt, the Provider shall not be obliged to undertake any Marketing Activity. To the extent that the Provider does undertake Marketing Activity, it shall comply with the Marketing Guidelines and the provisions of any NHS Trademark Licence granted in accordance with Rule 17.4.

17.4 Upon satisfaction of the Membership Conditions and following request by the Provider, the Authority shall grant the Provider an NHS Trademark Licence in the terms set out in Schedule 12.

## 18. **ERROR! BOOKMARK NOT DEFINED. CONFIDENTIALITY AND ANNOUNCEMENTS**

18.1 Except as provided in Rules 18.3 and 18.5, the Provider must:

- (a) keep the NHS Confidential Information strictly confidential;

- (b) not use, reproduce or record in any medium or form any of the NHS Confidential Information except to the extent that it is strictly necessary for the proper purposes of these Rules; and
  - (c) not disclose the NHS Confidential Information to any Third Party.
- 18.2 Except as provided in Rules 18.5, the Authority must:
- (a) keep the Provider Confidential Information strictly confidential;
  - (b) not use, reproduce or record in any medium or form any of the Provider Confidential Information except to the extent that it is strictly necessary for the proper purposes of these Rules; and
  - (c) not disclose the Provider Confidential Information to any Third Party.
- 18.3 The Provider must limit access to the NHS Confidential Information to those of its directors, employees and professional advisers (and to those of its permitted contractors, sub-contractors and agents) who reasonably require the information for the purposes of these Rules and the Provider must ensure that its directors, employees and professional advisers (and any contractors, sub-contractors and agents that it is permitted to use to provide the Clinical Services) keep the NHS Confidential Information strictly confidential.
- 18.4 Except as provided in Rule 18.5, the Provider must not:
- (a) release any press statement regarding its relationship with the Authority; or
  - (b) make any announcement relating to the relationship of the parties,
- without the Authority's prior written consent.
- 18.5 The obligations of confidentiality imposed in Rules 18.1 and 18.2 do not apply to any of the NHS Confidential Information or the Provider Confidential Information that:
- (a) is or comes into the public domain otherwise than through any disclosure prohibited by these Rules or by any Applicable Law; or
  - (b) in respect of the NHS Confidential Information, the Provider is required to disclose by law or by any governmental or other regulatory authority (including the rules of any stock exchange or listing authority) and the Provider must give the Authority at least 5 Business Days advance written notice of any intended disclosures of this sort unless it is legally prohibited from doing so; or
  - (c) in respect of the Provider Confidential Information, the Authority or Purchasing Authority is required to disclose by law or by any governmental or other regulatory authority (including but not limited to the Freedom of Information Legislation and the Authority will use its reasonable endeavours to give the Provider advance written notice of any intended disclosures of this sort unless it is legally prohibited from doing so; or
  - (d) is relevant to, and such disclosure is strictly necessary in administering these Rules or the IS ECN or for the performance of the Appointed Services in respect of the Patient in accordance with these Rules.
- 18.6 The Authority will make all press statements and other announcements regarding the Provider's IS ECN Participation and these Rules and the Provider shall promptly provide the Authority with any information and assistance it may require for this purpose.



19. **ERROR! BOOKMARK NOT DEFINED.NOTICES**

19.1 All notices (including without limitation notification of any Service Consents) shall be in writing and in the English language and all certificates, notices or written instructions to be given under the terms of these Rules shall be served by sending the same by e-mail, first class post, facsimile or by hand, leaving the same at:

- (a) If to the Provider, the contact details set out in the Membership Agreement or such other contact details in the United Kingdom as may be notified in writing to the Authority by the Provider from time to time.
- (b) If to the Authority: CCMU, Commercial Directorate, Department of Health, 7th Floor, New Kings Beam House, 22 Upper Ground, London, SE1 9BW; Fax No: 020 7633 7152; For the attention of: The IS ECN Contract Manager; or such other contact details as may be notified in writing to the Provider by the Authority from time to time.

19.2 **Notices:**

- (a) by way of e-mail shall be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message;
- (b) given by post shall be effective upon the earlier of: (i) actual receipt, and (ii) five (5) Business Days after mailing;
- (c) delivered by hand shall be effective upon delivery; and
- (d) given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
  - (i) within two (2) hours after sending, if sent on a Business Day between the hours of 9 a.m. and 4 p.m.; or
  - (ii) by 11 a.m. on the next following Business Day, if sent after 4 p.m. on a Business Day (but before 9 a.m. on that next following Business Day).

20. **INTEREST**

Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made in accordance with these Rules on the date on which such sums are payable in accordance with these Rules calculated from day to day at a rate per annum equal to the Interest Rate from the day after the date on which payment was due up to and including the date of payment.

21. **MITIGATION**

Each of the Authority and the Provider shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other pursuant to either the Provider's IS ECN Participation or these Rules.

22. **ASSIGNMENT AND SUBCONTRACTING**

22.1 Subject to Rule 22.2, the Provider must not assign, licence or otherwise transfer any of its rights, obligations or liabilities under or in connection with either the Provider's IS ECN Participation or these Rules without the Authority's prior written consent and this prohibition shall include the Provider not licensing or sub-licensing any of its rights or contracting out, sub-contracting, or using agents to perform any of its obligations.

22.2 The Provider may subcontract the provision of the relevant Clinical Services to the Approved Sub-Contractors provided always that the Provider shall remain fully responsible and liable in respect of those Clinical Services at all times.

22.3 Without prejudice to Rule 22.1 and Rule 22.2, the Provider shall ensure that no IS ECN Conduct whatsoever are carried out in the United States of America, including, for the avoidance of doubt, the export of Data and Personal Data to the United States of America.

**23. CHANGE IN CONTROL**

23.1 The Provider shall not at any time permit or procure a Change in Control to occur in respect of it (other than in respect of a public company whose Securities are traded on a recognised stock exchange and the Change in Control as a result of trading on such exchange) without the prior written consent of the Authority (such consent to be granted at its absolute discretion).

23.2 If there is a Change in Control of an Approved Sub-Contractor (other than in respect of a public company whose Securities are traded on a recognised stock exchange and the Change in Control as a result of trading on such exchange) then upon such Change in Control they shall cease to be an Approved Sub-Contractor for the purpose of these Rules unless the Provider has obtained the prior written consent of the Authority (such consent to be granted at its absolute discretion) to that Change in Control.

23.3 Notwithstanding any other provision of these Rules the Provider shall not at any time permit a Restricted Person to hold five (5) per cent or more of the total value of any Securities in it or in an Approved Sub-Contractor.

**24. NO PARTNERSHIP OR AGENCY**

Nothing in these Rules shall be construed as creating a partnership or a contract of employment between the parties, and save as expressly provided otherwise in these Rules, the Provider shall not:

- (a) be, or be deemed to be, an agent of the Authority; or
- (b) hold itself out as having authority or power to bind the Authority in any way.

**25. COSTS AND EXPENSES**

Each of the Authority and the Provider must bear its own legal and other costs and expenses in relation to the negotiation, preparation, execution and implementation of the Provider's IS ECN Participation.

**26. WAIVER**

Any relaxation, forbearance, indulgence or delay of any party in exercising any right under these Rules shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any such relaxation, forbearance, indulgence or delay constitute a waiver of any other right (whether against that party or any other person).

**27. ENTIRE ARRANGEMENT**

Except where expressly provided otherwise in these Rules, these Rules in conjunction with the Membership Agreement (and any document expressly referred to herein) constitute the entire arrangement and understanding between the Authority and the Provider in connection with their subject matter and supersede all prior agreements,

understandings or arrangements (whether oral or written) concerning the subject matter of these Rules which shall cease to have any further force or effect. It is agreed that:

- (a) in the Provider deciding, and the Authority permitting the Provider to participate in IS ECN, neither have relied upon, nor shall either have any claim or remedy in respect of, any statement, representation, warranty, undertaking, assurance, collateral contract or other provision made by or on behalf of any other party other than those expressly set out or referred to in these Rules;
- (b) the Provider has satisfied itself in relation to any matters or information upon which it is relying in deciding to accepting IS ECN Participation; and
- (c) except for any liability which a party has under or in respect of any breach of this agreement, no party shall owe any duty of care or have any liability in tort or otherwise to any other party in respect of, arising out of, or in any way relating to the transactions contemplated by these Rules,

provided nothing in this Rule 27 shall exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

## 28. **SEVERABILITY**

If any provision of the Membership Agreement or these Rules is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, that provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Membership Agreement or these Rules (as the case may be).

## 29. **ERROR! BOOKMARK NOT DEFINED. AMENDMENTS TO THESE RULES**

These Rules may be varied for all Providers by the Authority giving notice to all Providers in writing of any variation at least 60 calendar days prior to the variation taking effect.

## 30. **ERROR! BOOKMARK NOT DEFINED. THIRD PARTIES**

Save in respect of the indemnities or other rights expressed to be given in favour of the Purchasing Authorities or any Other NHS Party (including but not limited to the rights under Rule 1.12) and unless otherwise expressly provided to the contrary in these Rules, a person who is not a party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of these Rules. Notwithstanding any term of these Rules, the consent of any person who is not a party is not required to rescind or vary these Rules at any time.

## 31. **HUMAN RIGHTS**

In the course of the Provider's IS ECN Participation, the Provider and the Authority shall give all due regard to the provisions of the Human Rights Act 1998 and the Provider shall comply with the provisions of such Act as if it were a public authority (as such term is defined within the Human Rights Act 1998).

## 32. **DEFINITIONS AND INTERPRETATION**

32.1 In these Rules unless expressed to the contrary or the context otherwise requires words and expressions shall have the meanings assigned to them in Schedule 1.

32.2 In these Rules unless expressed to the contrary or the context otherwise requires:

- (a) references to these Rules include references them as amended from time to time;

- (b) references to the Authority, any Purchasing Authority or a Provider include (where applicable) its lawful successors and subject to these Rules, its permitted assigns and transferees;
- (c) references to a "person" include references to any natural person and to any corporate or other bodies that have a legal personality;
- (d) headings are for convenience only and must be ignored in construing these Rules;
- (e) the words "**company**", "**subsidiary**", "**subsidiary undertaking**" and "**holding company**" have the meanings given to them in the Companies Act 1985; and
- (f) "**include**", "**includes**" and "**including**" shall be construed so examples given are not intended to be exclusive or limiting examples of the matters in question.

32.3 If there is any conflict between the provisions of the main body of these Rules and those in any of its schedules or in any document that is referred to or annexed to it the provisions of the main body of these Rules shall prevail.

32.4 If there is any conflict between the provisions of these Rules and the Terms of Provision the provisions of these Rules shall prevail.

### 33. **GOVERNING LAW AND JURISDICTION**

33.1 These Rules and the Membership Agreement shall be considered as made in England and shall be subject to the laws of England.

33.2 Subject to Rule 15, the parties submit to the exclusive jurisdiction of the courts of England and Wales, waive any and all objections to such jurisdiction, accept service of process in England and Wales, waive any and all objections to compulsory process requiring the appearance of witnesses and the production of documents, and consent to full faith and credit for any judgment obtained against them in the courts of England and Wales.

## SCHEDULE 1

### GLOSSARY

**“18 Week Clock”** and **“18 Week Pathway”** means the pathways and rules governing 18-week clock starts, pauses and stops which are detailed in the 18 Week Guidance;

**“18 Week Guidance”** means the Department of Health guidance “Tackling hospital waiting: the 18 week patient pathway – an implementation framework”, published in May 2006, and in relation to the 18 Week Clock rules means the "updated clock rules" (December 2006) published as part of the "18-week rules suite" on 28 November 2007 (available at [www.18weeks.nhs.uk](http://www.18weeks.nhs.uk)), and which includes details of how clinical exceptions and patients choosing to wait longer will be handled through an operational tolerance

**“18 Weeks Referral-to-Treatment Target”** means the NHS’s commitment that by December 2008 no-one should have to wait more than 18 weeks from the time they are referred to the start of their treatment unless its clinically appropriate to do so or they choose to wait longer;

**"Activity"** means any unit of the Appointed Service being an individual appointment, procedure or other activity or event required to deliver that Appointed Service in respect of the Patient;

**“Activity Plan”** Means a schedule of anticipated activity for an Approved Facility as set out in Schedule 14, agreed between a Purchasing Authority and a Provider;

**"Applicable Laws"** means:

- (a) any applicable statute or proclamation or any delegated or subordinate law;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any relevant National Institute for Health and Clinical Excellence (NICE) interventional procedures guidance;
- (d) any NHS Requirement, applicable code of practice, national minimum standard, guidance, direction or determination with which the Provider is bound to comply 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 the Authority; and
- (e) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales,

in each case in force in England and Wales;

**"Appointed Services"** means those Clinical Services that the Provider is, from time to time, lawfully permitted to provide in accordance with its Healthcare Commission Registration;

**"Approved Contingency Plans"** means the contingency and disaster recovery plans of the Provider in respect of each Approved Facility as are referred to or form part of the relevant Healthcare Commission Registration together with, to the extent not otherwise included, arrangements to secure preservation of, and ease of access to, Patient Information in the event of any destruction of or damage of, or interruption of or disruption of access to, any Approved Facility or any other facility for the storage of relevant records;

**"Approved Facility"** means, in the case of each Appointed Service, those facilities as set out in the relevant Membership Agreement, or any other such facilities approved by the Authority in writing by way of an amendment to the Membership Agreement, which may be used by the Provider (in accordance with the Provider's Healthcare Commission Registration) for the provision of Appointed Services as part of the IS ECN;

**"Approval Date"** means the date the Membership Agreement is signed by both the Provider and the Authority;

**"Approved Sub-Contractors"** means, in the case of each Appointed Service, those service providers as set out in the relevant Membership Agreement which may be used by the Provider for the provision of such Appointed Services as part of the IS ECN or any other Sub-Contractor approved by the Authority in writing by way of an amendment to the Membership Agreement;

**"Associates"** means in respect of a person, a company that is a subsidiary, a holding company (each as defined in the Companies Act 1985) or a company that is a subsidiary of the ultimate holding company of the person;

**"Authorised NHS Party"** means any of the Authority, a Purchasing Authority and any other body or person concerned with an Activity or care of the relevant Patient, the CNST Administrator and the CNST Scheme Manager or any person duly authorised by any such body or person;

**"Authority"** means the Secretary of State for Health of Richmond House, 79 Whitehall, London SW1A 2NS or any successor;

**"Booking Procedures"** means the rules and procedures for the offering and publication of available Slots and the acceptance and variation of bookings for those Slots by providers and patients participating in the IS ECN, including any requirements and rules determined by the Authority for the use of Choose and Book, as determined by the Authority and notified in writing to the Provider from time to time;

**"Business Day"** means a day other than a Saturday, Sunday or a bank holiday on which banks are open for business in the City of London;

**"Capacity Review Action Plan"** means the agreed action plan between the Purchasing Authority and Provider following a Capacity Review

**"Capacity Review Criteria"** means the criteria to be satisfied for a Capacity Review as set out in the relevant Activity Plan

**"Capacity Review"** means a review of the capacity at an Approved Facility carried out in accordance with Schedule 14

**"Central Payment Arrangements"** means such arrangements as the Authority may make for the central invoicing and payment of providers participating in the IS ECN as notified in writing to the Provider from time to time;

**"Change in Control"** means any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital or the control over the right to appoint or remove directors) 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;

**"Charge Change Date"** means the date any material amendment to the Service Charges is to take effect in accordance with these Rules;

**"Choose and Book"** means the NPfIT electronic booking service for the identification and direct booking of any patient into the Clinical Services within or for the benefit of the NHS;

**"Choose and Book Secondary Care Menu"** means the menu forming part of Choose and Book on which all participating members appear irrespective of location;

**"Choose and Book Local Menu"** means a menu display within Choose and Book limited to participants in the vicinity of particular Purchasing Authority;

**“Clinically Appropriate”** means Appointed Services with Good clinical Practice and where the Provider has the appropriate equipment & facilities and suitably trained & qualified staff

**"Clinical Services"** means the list of clinical services as determined by the Authority as notified in writing to the Provider from time to time, with the list of initial clinical services being identified by reference to the HRG procedures set out in Schedule 7 together, subject to Rule 8.5, with any outpatient attendances associated with those procedures. For the avoidance of doubt, this shall include outpatient attendances where it is determined that an HRG procedure is not required;

**"CNST"** means the Clinical Negligence scheme for Trusts established by the National Health Service (Clinical Negligence Scheme) Regulations 1996 (SI 1996 No.251) (as amended by the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 1997 (SI 1997 No. 527), the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2000 (SI 2000 No. 2341), the National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2002 (SI 2002 No. 1073));

**"CNST Additional Annual Contribution"** means the sum determined as payable by the Provider in accordance with Part 2 of the CNST Conditions;

**"CNST Administrator"** means the NHSLA or whosoever is appointed from time to time by the Secretary of State for Health to administer the CNST;

**"CNST Claim"** means any Loss in respect of which the Authority is or may be obliged to indemnify the Provider pursuant to Rule 6.2;

**"CNST Conditions"** means the obligations on the part of the Provider set out in Parts 1 and 2 of Schedule 10;

**"CNST General Clinical Risk Management Standards"** means the CNST General Clinical Risk Management Standards (April 2005) as amended, supplemented or replaced from time to time;

**"CNST Member"** means a member as defined in the CNST Membership Rules;

**"CNST Membership Rules"** means the CNST Membership Rules dated April 2001, as the same may be amended, supplemented or replaced from time to time;

**"CNST Requirements"** means the requirements contained or referred to in the documents listed in Part 3 of the CNST Conditions as amended, supplemented or replaced from time to time and any further documents issued by or on behalf of the CNST or the CNST Administrator or the CNST Scheme Manager from time to time;

**"CNST Scheme Manager"** means the scheme manager appointed by the CNST Administrator from time to time in relation to all or any of the CNST;

**"CNST Termination Contribution"** means the sum determined as payable by the Provider in accordance with Part 2 of the CNST Conditions

**“Commissioning for higher Quality and Innovation (CQUIN)”** means the scheme as defined by the NHS Institute for Innovation and Improvement, as published on the Department of Health website

**"Competent Authority"** means any statutory or non-statutory body in accordance with whose instructions, directions and guidance the Provider is required by the relevant law, is accustomed or has agreed with the Authority or the Participating Authority to act, including (but not limited to) the Department of Health, Connecting for Health and the Healthcare Commission;

**"Connecting for Health"** mean the Department of Health agency responsible for the delivery of NPfIT;

**“CQUIN Payment”** means the financial incentive for meeting quality improvement targets set out in a CQUIN Scheme, calculated by applying the appropriate CQUIN Payment Factor to the Service Charge;

**“CQUIN Payment Factor”** means the Service Charge adjustment percentage calculated following an assessment of the Provider’s performance against the CQUIN Scheme;

**“CQUIN Scheme”** means the measures and assessments of service quality and improvement set out by the relevant Purchasing Authority (as identified in paragraph 1.2 of Schedule 13) against which the Provider’s performance at an Approved Facility will be measured to qualify for a CQUIN Payment

**"Data"** means any patient data, financial reporting data and management reporting data which is recorded and/or processed by the Provider in any form and on any media (including, by way of example only, any medical images, medical notes recorded on paper or electronically and reports) or which otherwise arises out of the supply of the Approved Services;

**"Department of Health"** means the Department of Health in England of HM Government, or such other body that may supersede or replace the Department of Health in England from time to time;

**"Direct Losses"** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law excluding Indirect Losses;

**"Disclosing Party"** means the Authority, a Participating Authority, the Department of Health, a Health Service Body and/or any other entity comprising part of the NHS;

**"Due Payment Date"** means (in respect of any amount properly due) the day which is 30 calendar days from the date of the Authority’s and the relevant Purchasing Authority’s receipt of a valid invoice that has been issued in accordance with the relevant Individual Service Contract and these Rules;

**"Employment Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, supplemented or replaced from time to time);

**“Equality Impact Assessment”** means a published scheme setting out what arrangements an organisations has in place to positively promote policy, practice and service delivery in respect of race, disability and gender equality;

**"Financial Year"** means each 12 month period ending 31 March;

**"First Outpatient Assessment"** means any individual appointment, procedure or other activity or event pursuant to which the relevant Patient has been assessed by a Health Service Body and diagnosed for treatment;

**"Force Majeure Event"** means any circumstances beyond a party's reasonable control which directly causes that party to be unable to comply with all or a material part of its obligations pursuant to either the Rules or to an Individual Services Contract which shall include, without limiting the generality of this term: war; civil war; armed conflict or terrorism; nuclear, chemical or biological contamination unless in any case the party claiming relief is the source or cause of the contamination; or pressure waves caused by devices travelling at supersonic speeds;

**"Free Choice"** means the UK Government plan to provide patients with the right to choose any health care provider which meets the UK Government’s standards and which can deliver value for money;



**"Freedom of Information Legislation"** means all statutes, instruments, common law, regulations, directives, codes of practice, decisions, recommendations and the like (whether in the United Kingdom or European Union or any other relevant restriction) concerning access to information held by government or public bodies including, but not limited to, the Freedom of Information Act 2000;

**"Good Clinical Practice"** means, for the purposes of these Rules and the relevant Individual Service Contracts only, using standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider providing clinical services the same or similar to the Activity or Approved Service at the time the Activity or Approved Service is provided.

**"Good IM&T Practice"** means, for the purposes of these Rules only, using standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill, care, diligence, prudence and foresight which would be reasonably and ordinarily expected from a skilled, efficient and experienced person engaged in services the same as or similar to the IM&T Services under the same or similar circumstances to those pertaining to these Rules;

**"Good Industry Practice"** means using standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced person engaged in activities the same or similar to IS ECN Conduct under the same or similar circumstances to those pertaining to these Rules or the relevant Individual Services Contracts;

**"Goods"** means any goods to be provided by the Provider as part of the Patient Services;

**"Group Company"** means in relation to a company, any company that is its holding company, and any other company that is a subsidiary of that holding company with the terms "holding company", and "subsidiary" having their defined meanings in Rule 32.2(e);

**"Healthcare Commission"** means the Commission for Healthcare Audit and Inspection or any successor or replacement body carrying out its functions;

**"Healthcare Commission Registration"** means a valid Independent Healthcare (Private and Voluntary) registration of the Provider by the Healthcare Commission as a provider of certain Clinical Services at certain facilities which is in force and not suspended in respect of those Clinical Services or facilities;

**"Health Service Body"** has the meaning given in section 4 of the NHS and Community Care Act 1990 and, for the purposes of these Rules, includes NHS Trusts, GPs, Strategic Health Authorities, the General Dental Council and the General Optical Council and in each case any successor or replacement body carrying out its functions;

**"HRG"** means Healthcare Resource Group;

**"IM&T"** means information management and technology, and is used to describe any system or process used in connection with informatics, whether electronic or not;

**"IM&T Requirements"** means the requirements and/or services necessary to ensure the delivery of Appointed Services pursuant to these Rules as set out in Schedule 6 or such other requirements as may be determined by the Authority and notified in writing to the Provider from time to time;

**"IM&T Services"** means all services in connection with IM&T necessary to ensure the delivery of the Appointed Services in accordance with these Rules and the relevant Individual Services Contract including but not limited to the IM&T Requirements;

**"Indirect Losses"** means loss of profits, loss of use, loss of production, loss of business opportunity, or a claim for consequential loss or indirect loss of any nature but excluding any loss (regardless as to whether such claims themselves refer to consequential and/or indirect loss) relating to claims made in respect of death, personal injury and/or clinical or medical negligence;

**"Individual Service Contract"** means a contract between a specific Purchasing Authority and the Provider on the Terms of Provision obliging the Provider to provide the Patient Services in relation to the Patient;

**"Information Requirements"** means the requirements for provision of information set out in Schedule 5;

**"Initial Period"** means a period of 3 months following the Operational Commencement Date of the Provider;

**"Insolvent"** means that either:

- (a) the Provider is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or any statutory modification or re-enactment of that or an equivalent provision in another jurisdiction; or
- (b) any step or proceeding is taken, any application, order, resolution or appointment is made, or any notice given, by or in respect of the Provider or any of its Subsidiary Undertakings in relation to the whole or any part of its undertaking for a distress, execution, the suspension of payments, a moratorium of any indebtedness, a composition, assignment or arrangement with creditors, winding-up, dissolution, administration, receivership (administrative or otherwise), or bankruptcy, in any jurisdiction to which it is subject (including, without limitation, the one in which the Provider is incorporated) that has an effect similar or equivalent to any of the events mentioned in this paragraph (b);

**"Intellectual Property"** means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how;

**"Interest Rate"** means 1% over LIBOR;

**"IS ECN"** means the Extended Choice Network under which the Authority ensures that Providers selected by responses to the Invitation to Tender dated 11 April 2006 have presence on the Choose and Book Secondary Care Menu and may, at the sole discretion of Purchasing Authorities, be included on certain Choose and Book Local Menus;

**"IS ECN Conduct"** means any activities undertaken as part of or pursuant to the role of the Provider as a participant in the IS ECN as contemplated by these Rules or any Individual Services Contract including, but not limited to, the provision of any Appointed Services by the Provider and all activities ancillary to such provision;

**"IS ECN Participation"** means participation as a member in the IS ECN and shall not refer to any other aspect of a Providers inclusion in the IS ECN or appearance on any Choose and Book menu in any other capacity or as part of any Other Clinical Arrangement;

**"IS FCN"** means the Independent Sector Free Choice Network;

**"LIBOR"** means the rate per annum determined by NatWest Bank plc to be the offered rate for six-month sterling deposits in the London Interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate service);

**"Longstop Date"** means 31 March 2010;

**“Marketing Activity”** means all activity in which the Provider (or any third party acting on behalf of the Provider) engages for the purpose of promoting, advertising, marketing or otherwise increasing awareness of any or all of the Appointed Services and/or the Approved Facilities (including the production, distribution, publication, broadcast or display of Marketing Materials), in each case whether directly or indirectly and whether to or amongst the public, any Purchasing Authority or any other person (whether or not such purpose is the principal purpose of such activity);

**“Marketing Code”** means the code issued by the Authority in relation to the conduct of Marketing Activity as amended and reissued from time to time by the Authority;

**"Marketing Guidelines"** means the marketing and advertising guidance at Schedule 11, the Marketing Code and any other guidance that the Authority shall issue to all providers of NHS care from time to time;

**“Marketing Materials”** means all sales promotional, marketing and/or advertising materials (including websites) produced or distributed by or on behalf of the provider in connection with the Appointed Services or which otherwise make reference to the Appointed Services, the IS ECN or express or imply a connection between the Provider and the NHS;

**"Membership Agreement"** means the Authority and the Provider's written agreement to abide by the Rules in the form set out in Schedule 4 and signed on the Approval Date;

**"Membership Conditions"** means the conditions set out in Rule 1.1;

**"Membership Period"** means the period commencing on the Operational Commencement Date and expiring or terminating in accordance with Rule 3;

**“Minimum Dataset”** means the minimum patient dataset for the transfer of patients between Secondary Care Providers as set out in DSCN 07/2008 as amended from time to time;

**"MFF"** means the market forces factor (MFF) multiplier as published at: <http://www.dh.gov.uk/paymentbyresults> for the nearest NHS Acute Trust or NHS Foundation Trust (in distance) to the Approved Facility at which the relevant Approved Service is provided as set out in the annex to the relevant Membership Agreement;

**"MFF Adjustment"** means the difference between the NHS Tariff and an amount determined by applying MFF as a multiplier of the relevant NHS Tariff;

**"Monthly Activity Report"** means a report providing a summary of the outpatient attendances and procedures completed at each Approved Facility for each Purchasing Authority in the relevant month in the form set out in Schedule 8 or such other form as the Authority may determine and notify in writing to all Providers from time to time;

**“National Programme for Patient Reported Outcome Measures (PROMs)”** means the collection of Patient Reported Outcome Measures for elective procedures as defined by Annex E of the Operating Framework 2008/09;

**"NPfit"** means the National Programme for Information Technology approved by the Department of Health on 12 June 2002 which is the procurement and implementation programme that will deliver the NHS IM&T strategy called 'Delivering 21st Century IT Support for the NHS - National Strategic Programme';

**"NHS"** means the National Health Service;

**"NHSLA"** means the National Health Service Litigation Authority, being the Special Health Authority established pursuant to the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 by the Secretary of State for Health to administer the CNST and

shall include where appropriate the board and any committee or sub-committee of the board of the NHSLA and the officers of the NHSLA;

**"NHS Brand Policy and Guidelines"** means the policy and guidelines prescribing the permitted form and manner in which the "NHS" Marks may be used, as amended and reissued from time to time by the Authority in its sole discretion;

**"NHS Confidential Information"** means all information relating to any Disclosing Party which is supplied by or on behalf of that Disclosing Party whether:

- (a) before or after the date of these Rules;
- (b) in writing, orally or in any other form;
- (c) received directly or indirectly, from or pursuant to, discussions with another party; or
- (d) obtained (or not) through observations made,

and includes all analyses, compilations, studies and other documents whether prepared by, or on behalf of, a Disclosing Party which contain, or otherwise reflect, or are derived from, such information;

**"NHS Requirement"** means, in relation to the Clinical Services, all mandatory NHS requirements and any similar official requests, requirements and NHS standards and recommendations having similar status for the time being in force, but only to the extent the same are published and publicly available (whether on the Department of Health website, on the website of a Competent Authority or otherwise) or the existence and contents of them have been notified to the Provider by the Authority or a Participating Authority;

**"NHS Tariff"** means, in respect of the relevant Clinical Service, the NHS tariff amount published at: <http://www.dh.gov.uk/paymentbyresults>;

**"NHS Trademark Licence"** means the trademark licence substantially in the form set out in Schedule 12;

**"Operational Commencement Date"** means the later of:

- (a) the Approval Date;
- (b) the date upon which the Provider has satisfied all the Membership Conditions; and
- (c) twenty (20) Business Days following the Provider submitting to the Authority a completed Whole Time Equivalent Form in respect of all Service Staff employed or engaged by the Provider or a Provider Party in IS ECN Conduct.

**"Other Clinical Arrangements"** means any arrangements involving any Other NHS Party for the provision of Clinical Services other than the IS ECN;

**"Other Contracted Conduct"** means any activities that may be undertaken by the Provider for any Other NHS Party as part of, or pursuant to the role of the Provider as a party to, any Other Clinical Arrangements as contemplated by those Other Clinical Arrangements including, but not limited to, the provision of any Appointed Services by the Provider and all activities ancillary to such provision;

**"Other NHS Party"** means the Authority, the Department of Health, any Primary Care Trust or any other Health Service Body who, in addition to the Provider, is a party to the relevant Other Clinical Arrangement;

**"Patient"** means the patient specified in the Valid Booking;

**"Patient Brochure"** means brochure for the provision of information to prospective NHS Patients produced by the Provider in accordance with and meeting the requirements of Schedule 11;

**"Patient Exclusion Group"** means the categories of patients set out in Part A of Schedule 3 or such other categories of patients as the Authority may notify to the Provider from time to time;

**"Patient Information"** means Patient Records together with any information relating to Patients which is not required to be kept in Patient Records;

**"Patient Records"** means the records related to a Patient's health (including any records provided by or on behalf of the Authority, the Purchasing Authority or the Patient) maintained by the Provider in accordance with Good Clinical Practice, Good Industry Practice, the relevant Individual Services Contract in respect of that Patient and the requirements under these Rules;

**"Patient Services"** means all Appointed Services designated in the Valid Booking and for the avoidance of doubt to the extent relevant and necessary include all such services comprised within the Clinical Service for which that Patient Booking is made;

**"Payment by Results System"** means the system known as 'Payment by Results' more fully described at <http://www.dh.gov.uk/paymentbyresults>;

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Primary Care Trusts"** means a primary care trust which may be established by the Secretary of State in accordance with Section 16A of the National Health Service Act 1977;

**"Procedure Exclusion Group"** means the categories of procedures set out in Part B of Schedule 3 or such other categories of procedures as the Authority may notify to the Provider from time to time;

**"Provider"** means:

- (a) in the context of these Rules, a supplier of Clinical Services who has signed a Membership Agreement; and
- (b) in the context of an Individual Services Contract, a supplier of Clinical Services who has signed a Membership Agreement and whose details are set out in a Valid Booking;

**"Provider Party"** means any of the Provider, an Approved Sub-Contractor, an agent of the Provider including its or their directors and any of their officers, employees or workmen engaged in relation to the Services and **"Provider Parties"** shall be construed accordingly;

**"Provider Confidential Information"** means all information of a confidential nature relating to the Provider which is marked 'Confidential' or 'Commercial in Confidence' supplied by the Provider whether:

- (a) before or after the date of these Rules;
- (b) in writing, orally or in any other form;
- (c) received directly or indirectly, from or pursuant to, discussions with another party; or
- (d) obtained (or not) through observations made,

and includes all analyses, compilations, studies and other documents whether prepared by, or on behalf of a Provider which contains, or otherwise reflect, or are derived from, such information;

**"Purchasing Authorities"** means:

- (a) in the context of these Rules, all Primary Care Trusts and such other Health Service Bodies as may be authorised by the Authority from time to time to purchase Appointed Services through the IS ECN; and
- (b) in the context of an Individual Services Contract, all Primary Care Trusts and such other Health Service Bodies as may be authorised by the Authority from time to time to purchase Appointed Services through the IS ECN and whose details are set out in the relevant Valid Booking.

Where the Purchasing Authority is not a Primary Care Trust, such Purchasing Authority will, unless otherwise specified, purchase as agent for the relevant Primary Care Trust.

**"Restricted Person"** means any person:

- (a) who has a material interest in the production of tobacco products or alcoholic beverages; or
- (b) who the Authority otherwise reasonably believes is inappropriate for public policy reasons to have a controlling interest in the provider of the Clinical Services;

**"Revised IS ECN Pricing Policy"** means such method of calculation as may be determined by the Authority and notified to the Provider;

**"Rules"** mean these rules governing the Provider's participation in the IS ECN;

**"Rule Change Date"** means the date any amendment to these Rules in accordance with Rule 29 is to take effect;

**"Secondary Care Provider"** means either an NHS Foundation Trust or an Acute Trust;

**"Security"** means shares, debt securities, units in a collective investment scheme (as defined in the Financial Services and Markets Act 2000), miscellaneous warrants, certificates representing debt securities, warrants or options to subscribe or purchase securities, other securities of any description and any other type of proprietary or beneficial interest in a limited company;

**"Serious Untoward Incident"** means an incident or accident what a Patient, member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on an Approved Facility and where the action of the Provider are likely to be of significant public concern;

**"Service Charges"** means the charges for the Clinical Services calculated by applying the relevant NHS Tariff plus MFF for each Clinical Service determined in accordance with the Payment by Results system;

**"Service Consents"** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements, authorisations, exceptions and declarations required by Applicable Law, for or in connection with the performance of Clinical Services, and all necessary consents and agreements from any third parties needed to carry out the Clinical Services (including, without limitation Healthcare Commission Registration), and other obligations of the Provider, in accordance with these Rules save to the extent that the same can only be obtained by the Authority or the relevant Purchasing Authority;

**"Service Issue Event"** means any of the following:

- (a) the Provider's Healthcare Commission Registration is breached, suspended, terminated or varied such that it not permitted to provide any (or certain) Appointed Services or its facilities at which it intends to provide the Appointed Services are no longer Approved Facilities; or

- (b) the Provider provides or purports to provide or make available through the IS ECN:
  - (i) any services other than Appointed Services; or
  - (ii) any Appointed Services at any facility that is not an Approved Facility; or
- (c) the Provider commits a material breach of the CNST Conditions; or
- (d) the Provider during the Membership Period ceases to fulfil the Membership Conditions; or
- (e) the Provider acts in such a manner as to endanger the safety of Patients; or
- (f) such other events as the Authority may notify in writing to all Providers as applying to their IS ECN Participation from time to time;

**"Service Staff"** means any and all persons engaged from time to time in the provision of the Clinical Services or the undertaking of IS ECN Conduct, whether employees or agents of the Provider or of any subcontractor or agent of, or provider of services to, the Provider or otherwise;

**"Slot"** means the initial Activity of any Patient Services to be provided at an identifiable time which may include, without limitation, an initial consultation, an outpatients appointment, a pre-operative appointment, an operative appointment or a post-operative appointment;

**"Standards for Better Health"** means both the core standards and any developmental standards that may be agreed for the Provider during the term of these Rules as set out in the "National Standards, Local Action – Health and Social Care Standards and Planning Framework 2005/06-2007/08 (DoH, 2005)";

**"Status Certificate"** means a certificate in the form set out in Schedule 9 or such other form as the Authority may determine and notify in writing to all Providers from time to time;

**"STEIS"** means the NHS Strategic Executive Information System operated by the DH (<http://www.performance.doh.gov.uk/steis/>);

**"Suspension Event"** means the any of the following:

- (a) the Provider failing to make available Slots for Appointed Services in such quantities and at such times as the Authority may in its absolute discretion consider to be reasonable in order to enhance the overall facilities made available to Patients; or
- (b) the Provider cancels a Valid Booking or Activity or fails to perform an Activity pursuant to a Valid Booking other than in accordance with these Rules or an Individual Service Contract; or
- (c) the Provider breaches Rule 12.4;
- (d) the Provider acts in a manner that is contrary to Good Clinical Practice; or
- (e) there are irregularities in the Provider's invoices and the Authority reasonably suspects that the Provider has been either negligent or fraudulent in the preparation of such invoices; or
- (f) such other events as the Authority may notify in writing to all Providers as applying to their IS ECN Participation from time to time;
- (g) the Healthcare Commission identifies material or persistent failures by the Provider to comply with the Care Standards Act, or Private and Voluntary Healthcare Regulations as evidenced in a Healthcare Commission report;

**"Suspension Notice"** means the notice given by the Authority under Rule 2.5 suspending the Provider from the IS ECN in accordance with these Rules;

**"Suspension Period"** means any suspension period commencing either automatically pursuant to Rule 2.2 or on the Provider being issued with a Suspension Notice pursuant to Rule 2.5 and ending at such time as the Authority may determine at its sole discretion and notified in writing to the Provider (either by specifying such restrictions in the Suspension Notice or by separate notification to the Provider);

**"Suspension Restrictions"** means those restrictions on the Provider's IS ECN Participation as the Authority may determine at its sole discretion and notify in writing to the Provider;

**"Terms of Provision"** means the terms set out in Schedule 2 as the same may be amended by the Authority in accordance with these Rules from time to time;

**"Third Party"** means a person other than the Provider, the Authority or the relevant Purchasing Authority;

**"Valid Booking"** means a booking for a Slot made in accordance with the Booking Procedures;

**"Valid Invoice"** means an invoice complying with the requirements of these Rules and the relevant Individual Services Contract;

**"VAT"** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

**"Whole Time Equivalent Form"** means the form set out in Part 5 of the CNST Conditions or such replacement as may be issued by the CNST Administrator from time to time.



## SCHEDULE 2

### TERMS OF PROVISION

#### STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF CLINICAL SERVICES BY AN IS ECN MEMBER

*These terms apply to all Individual Service Contracts created pursuant to a Valid Booking for Patient Services placed by a Purchasing Authority with a Provider under the umbrella of the Provider's membership of the IS ECN and the rules governing the Provider's participation in the IS ECN which expressly reference these Terms of Provision (the "Rules").*

#### 1. INTERPRETATION

- 1.1 *In this Agreement unless expressed to the contrary or the context otherwise requires words and expressions shall have the meanings assigned to them in the Rules.*
- 1.2 *In these Terms of Provision unless expressed to the contrary or the context otherwise requires:*
- (a) *references to the Individual Service Contract or these Terms of Provision include references to the Individual Service Contract or these Terms of Provision as validly varied from time to time;*
  - (b) *references to any party include (where applicable) its lawful successors, permitted assigns and transferees;*
  - (c) *references to a "person" include references to any natural person and to any corporate or other bodies that have a legal personality;*
  - (d) *headings are inserted for convenience only and must be ignored in construing these Terms of Provision;*
  - (e) *the words "**company**", "**subsidiary**", "**subsidiary undertaking**" and "**holding company**" have the meanings given to them in the Companies Act 1985; and*
  - (f) *"include", "includes" and "including" shall be construed so that the examples that are given are not intended to be exclusive or limiting examples of the matters in question.*
- 1.3 *If there is any conflict between the provisions of the Rules and the Terms of Provision the provisions of the Rules shall prevail.*

#### 2. APPLICATION

*These Terms of Provision shall apply to, and shall be incorporated in, each Individual Service Contract created by a Valid Booking.*

#### 3. COMPLIANCE WITH THE RULES

*The Provider warrants, represents and undertakes that:*

- (a) *at the time of the Valid Booking it was in compliance with the Rules; and*
- (b) *it shall comply with the Rules throughout the term of the Individual Service Contract*

**4. SERVICE SCOPE**

4.1 *Subject to clause 5.1 of these Terms of Provision, the Provider shall provide all of the Patient Services:*

- (a) *to the extent and in the manner relevant and necessary in the context of the existing arrangements made by the Purchasing Authority for the relevant patient and in order to reflect the individual patient's treatment requirements and circumstances; and*
- (b) *subject to the overriding requirement to use Good Clinical Practice in the interests of Patient care, in an efficient and well organised manner such as to avoid unnecessary disruption for, or services being provided to, the Patient or costs being incurred by any Patient or Purchasing Authority; and*
- (c) *at the Approved Facility,*

*and not otherwise.*

4.2 *The Provider warrants that it has the right to provide the Patient Services and that the supply and use of the Patient Services will not infringe the Intellectual Property of any Third Party.*

4.3 *The Provider warrants that the Patient Services could not be provided under any Other Clinical Arrangement to which the Provider is a party.*

4.4 *If any Patient Services provided at a facility pursuant to this Individual Service Contract is the same (in all material respects) as any Other Contracted Conduct that may be provided at that facility under any Other Clinical Arrangement, then:*

- (a) *the Provider shall in relation to the relevant Other NHS Party waive its right to payment arising due to any income guaranteed to the Provider that has not been utilised to deliver services under that Other Clinical Arrangement by the amount payable to the Provider by the Authority or the relevant Purchasing Authority (as the case may be) pursuant to the Individual Services Contract in respect of the Patient Services; and*
- (b) *the Provider agrees that the relevant Other NHS Party shall have the right to enforce and to enjoy the benefit of this waiver notwithstanding that such Other NHS Party may not be a party to the Individual Services Contract.*

**5. SERVICE STANDARDS**

5.1 *The Provider shall provide the Patient Services:*

- (a) *in accordance with Good Industry Practice, Good Clinical Practice and Applicable Laws;*
- (b) *to a standard fit for the purpose for which the Authority, the Purchasing Authority and the Patient requires the Patient Services in all respects;*
- (c) *with full regard to the safety of all persons at the Facility;*
- (d) *in a manner:*
  - (i) *consistent with the Purchasing Authority discharging their respective statutory functions;*
  - (ii) *such as to achieve and maintain the National Minimum Standards required for independent hospitals under the Care Standards Act 2000*

- (iii) *which is non-discriminatory on the grounds of gender, age, ethnicity, disability, religion, sexual orientation of other non-medical characteristic;*
  - (e) *in compliance with all Service Consents (including without limitation the giving of notices and the obtaining of any such Service Consents) and so as not to prejudice the renewal of any such Service Consents. For the purposes of this clause 5.1(e) 'Service Consents' shall include any Service Consents that have been obtained by the Authority or the Purchasing Authority; and*
  - (f) *in accordance with Standards for Better Health, including but not limited to waiting times targets;*
  - (g) *in accordance with any Activity Plan agreed with that Purchasing Authority; and*
  - (h) *so as to meet the 18 Weeks Referral-to-Treatment Target and shall comply with the 18 Week Clock and the 18 Week Pathway, having due regard to the 18 Week Guidance.*
- 5.2 *Time is of the essence as regards the performance of the Provider's obligations under the Individual Service Contract.*

## **6. CNST COVERAGE**

- 6.1 *Without prejudice to clause 14 of these Terms of Provision, the Provider shall comply with the CNST Conditions.*
- 6.2 *Subject to clause 6.3 of these Terms of Provision, the Authority (as agent for the relevant CNST Member) shall indemnify and keep the Provider and each Provider Party and Service Staff indemnified at all times from and against all damages, costs or other sums paid or payable by (as the case may be) the Provider and any Provider Party and any Service Staff to or in respect of any Patient, his dependents or estate in consequence of or in connection with any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence or alleged medical or clinical negligence on the part of the Provider or any Provider Party or Service Staff in connection with any IS ECN Conduct.*
- 6.3 *The obligation on the part of the Authority pursuant to clause 6.2 of these Terms of Provision will not apply:*
- (a) *where the Provider has failed to comply with any of the CNST Conditions or clause 25 of these Terms of Provision to the extent that failure adversely affects the availability of benefits to the relevant CNST Member or the exercise of the discretion of the CNST Administrator to make available any such benefits to the relevant CNST Member pursuant to the CNST Requirements in respect of the claim by or on behalf of a Patient, his dependents or estate referred to in clause 6.2 of these Terms of Provision; and*
  - (b) *in relation to any claim in respect of which the Provider is obliged to indemnify any the Authority and/or the Purchasing Authority pursuant to clause 7(b)(iii) of these Terms of Provision.*

## **7. PROVIDER INDEMNITY**

*Save in each case to the extent that clause 6.2 of these Terms of Provision applies, the Provider shall indemnify and keep indemnified the Purchasing Authority against all Direct Losses incurred or suffered by each of them as a result of or in connection with any and all:*

- (a) *failures to provide the Patient Services in accordance with the Individual Service Contract;*
- (b) *third party claims against the Purchasing Authority relating to any service the Provider provides (or purports to provide) pursuant to IS ECN Participation whether or not in breach of these Rules including (without limitation):*
  - (i) *as a result of or in connection with any medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in relation to the provision of any clinical services other than the IS ECN Conduct; and/or*
  - (ii) *any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in connection with any IS ECN Conduct where the Provider has failed to comply with any of its obligations under the CNST Conditions or clause 25 of these Terms of Provision to the extent that such failure adversely affects the availability of benefits to the relevant CNST Member or the exercise of the discretion of the CNST Administrator to make available any such benefits to the relevant CNST Member pursuant to the CNST Requirements in respect of the claim by or on behalf of a Patient, his dependents or estate referred to in this clause 7(b)(ii) of these Terms of Provision; and/or*
  - (iii) *any claim by or on behalf of any Patient, his dependents or estate in respect of medical or clinical negligence, or alleged medical or clinical negligence, on the part of the Provider or any Provider Party or Service Staff in connection with any CNST Activity brought in, or otherwise made subject to the jurisdiction of a court in, the United States of America:*
    - (1) *on the grounds that the Services or any part of them were carried out in the United States of America, including, for the avoidance of doubt, the export of Data or Personal Data to the United States of America; or*
    - (2) *on the grounds of the place of incorporation or registration of the Provider or any Provider Party or any Associate of the Provider or any Provider Party; or*
    - (3) *on any other grounds except those of the citizenship, residence or domicile of the claimant.*

## **8. CANCELLATIONS**

- 8.1 *A Valid Booking or Activity may be cancelled at any time with or without notice by the Authority, the Purchasing Authority or the Patient without liability.*
- 8.2 *If the Patient cancels or does not attend a Valid Booking or Activity the Provider shall inform the Purchasing Authority within 24 hours of that cancellation or non-attendance.*
- 8.3 *Unless instructed otherwise by the Authority or the Purchasing Authority, if the Authority, the Purchasing Authority or the Patient cancels, or the Patient does not attend, a Valid Booking or Activity the Provider shall use its reasonable endeavours and take all reasonable steps to reschedule the Valid Booking or Activity with the Patient within such period that is consistent with any 18 Weeks Referral-to Treatment Target from time to time.*

8.4 *Subject to the Rules, a Provider may cancel a Valid Booking or Activity by reasonable notice to the Patient and relevant Purchasing Authority only if:*

- (a) *it is reasonably justifiable in the relevant Patient's interest to do so or if it is reasonably necessary to do so in order to enable the Provider to attend to a life threatening emergency (For the avoidance of doubt, a Provider is not permitted to cancel a Valid Booking or Activity in order to provide treatment to a non-NHS patient in place of that Valid Booking or Activity other than in the case of a life threatening emergency); and*
- (b) *the Provider also uses its reasonable endeavours and takes all reasonable steps to reschedule the Valid Booking or Activity with the Patient within such period that is consistent with any 18 Weeks Referral-to-Treatment Target from time to time and supports the Purchasing Authority and local health economy in achieving any relevant NHS waiting times targets.*

8.5 *If a Valid Booking or activity is cancelled in accordance with clauses 8.1 to 8.4 of these Terms of Provision , the Provider may terminate the Individual Service Contract by written notice to the Purchasing Authority provided always that:*

- (a) *the Provider has given the Purchasing Authority written warning (not to be served until at least 30 Business Days, following the cancellation or non-attendance of the relevant Valid Booking or Activity) that if the relevant Valid Booking or Activity is not rescheduled with the Patient within a specified period (being not less than 10 Business Days following receipt of the notice) the Individual Services Contract may be terminated by the Provider; and*
- (b) *the period specified in the notice served pursuant to clause 8.5(a) of these Terms of Provision has expired and during such notice period the Patient has not attempted to reschedule the Valid Booking or Activity; and*
- (c) *the Provider has at all times complied with its obligations under clauses 8.1 to 8.4 of these Terms of Provision and Rule 8; and*
- (d) *the Provider, through no fault of its own, has been unable to reschedule the relevant Valid Booking or Activity with the Patient.*

8.6 *No amounts (including any Service Charges) shall be payable in respect of:*

- (a) *any cancelled Valid Booking or Activity not performed by the Provider regardless of reason, including but not limited to a patient failing to attend in accordance with a Valid Booking without any notice;*
- (b) *any Slot or other Activity which the Provider may undertake in breach of clause 4.1(b) of these Terms of Provision and in particular, without limitation, any initial diagnostic outpatient assessment where any First Outpatient Assessment has already taken place and the Provider has been:*
  - (i) *advised that the First Outpatient Assessment has occurred; and*
  - (ii) *provided with the results of that First Outpatient Assessment;*
- (c) *any Activity provided in breach of Rules 1.8 or 1.9 or 1.11.*

## 9. **CHARGES**

9.1 *Subject to clause 10.2 of these Terms of Provision and Rules 1.11 and 1.12, the Purchasing Authority shall pay the Provider the Service Charges and any CQUIN Payment and, without prejudice to the express obligations of the parties set out in the*

*Individual Service Contract, this shall be the full extent of the Purchasing Authority's contractual obligations to pay the Supplier any sums under or in connection with the Individual Service Contract*

- 9.2 *The Service Charges are in consideration of (and their payment is conditional upon) the supply of the Patient Services (including any relevant Goods) in accordance with the Individual Service Contract.*
- 9.3 *The Service Charges that apply to the Individual Service Contract shall be those Service Charges in effect at the date of the relevant Valid Booking.*
- 9.4 *The supply of Patient Services under this Agreement may be VAT exempt under the provisions of Group 7 to Schedule 9 of the 1994 VAT Act. If the Provider incurs irrecoverable VAT (for whatever reason) there will be no revision to the Service Charges or any additional amount payable for the Appointed Services.*

10. **PAYMENT**

10.1 *The Provider must provide invoices and receive payment on the following basis:*

- (a) *the Provider shall provide Valid Invoices direct to the Purchasing Authority (with a copy sent to the Authority) within 10 Business Days (inclusive) of the end of each month in respect of the Services supplied in that month; and*
- (b) *include the following information:*
- (i) *a summary of the Patient Services provided by the Provider during the period to which the invoice relates presented in sufficient detail to enable the recipient of the invoice to identify and confirm the supply of the Patient Services in question and that they are provided as part of the IS ECN and not any Other Clinical Arrangements; and*
- (ii) *the amount of the Service Charges in respect of the Patient Services provided; and*
- (c) *all invoices sent to the Purchasing Authority (and the Authority) must be accompanied by a Monthly Activity Report that has been accurately and diligently completed by the Provider setting out details of all Patient Services which it has provided in the relevant month through IS ECN Participation and details of the invoicing of such Patient Services;*
- (d) *subject to the Provider complying with the clauses 10.1(a) to 10.1(c) of these Terms of Provision, the Purchasing Authority shall pay all Service Charges due and properly payable to the Provider on or before the relevant Due Payment Date provided always that the Provider may withhold payment where all or part of the amount payable pursuant to any invoice is subject to a bona fide dispute (which for the purpose of clause 23 of these Terms of Provision shall be deemed to be an amount that is not due and properly payable), in which case the part of the invoice not in dispute shall be paid and in respect of the part of the invoice which is subject to dispute the parties shall seek to resolve the dispute as soon as reasonably possible in accordance with the dispute resolution procedure set out in the Rules; and*
- (e) *within 30 days of the end of the Financial Year (or within 30 days of termination of the Provider's membership of the IS ECN) the Provider shall provide a valid invoice for any CQUIN Payment applicable to the Individual Service Contract. Where a Provider has entered into multiple Individual Service Contracts for a single Purchasing Authority, the Provider may aggregate the CQUIN Payments into a single invoice.*

10.2 *Without prejudice to its other rights and remedies the Purchasing Authority may:*

- (a) *set-off and deduct from the amounts due to the Provider under the Individual Service Contract any amounts owed to the Purchasing Authority by the Provider (whether liquidated or not) irrespective of whether the liability to pay those amounts arose under or in connection with the Individual Service Contract.*
- (b) *by notice to the Provider assign to the Authority or any other Purchasing Authority its rights in respect of any amounts owed to the Purchasing Authority by the Provider (whether liquidated or not) irrespective of whether the liability to pay those amounts arose under or in connection with the Individual Service Contract, and the Authority or relevant Purchasing Authority (as the case may be) may exercise any right of set-off or deduction it may have against the Provider in respect of those amounts.*
- (c) *withhold payment of any amounts, including any Service Charges or CQUIN Payment, payable in respect of Patient Services until it receives the information required pursuant to paragraph 3 of Schedule 5 to the Rules.*

## 11. **GOODS**

*Where any Goods are supplied by the Provider as part of the provision of the Patient Services:*

- (a) *the Provider warrants, undertakes and represents that the Goods:*
  - (i) *will be of the highest quality and fit for the purpose relevant to the Patient Services pursuant to which the Goods are being provided and any other purpose held out by the Purchasing Authority (or the Patient) or made known to the Provider at the time the Individual Service Contract is made, in each case, consistent with the standards applied generally by the NHS or, if higher, required by any Applicable Laws;*
  - (ii) *will be free from defects in design, material and workmanship and will remain so for such period as is consistent with, in each case, the standards applied generally by the NHS or, if higher, required by any Applicable Laws;*
  - (iii) *will correspond to the relevant specification (if any) as set out in the description of the Patient Services;*
  - (iv) *will comply with all statutory requirements and regulations (or any other conditions implied by the Applicable Law) relating to the sale of the goods.*
- (b) *ownership of those Goods shall pass to the Purchasing Authority when they are delivered to the Purchasing Authority as part of the supply of the Patient Services;*

## 12. **IM&T COMPLIANCE**

*The Provider shall at all times comply with the IM&T Requirements.*

## 13. **STAFF**

- 13.1 *The Provider shall be the employer or contractor of all Service Staff in respect of all Patient Services provided by it and in respect of any other activities undertaken as part of or pursuant to the fulfilment of its obligations under the Individual Service Contract and shall remain responsible at all times for all liabilities in respect of them including, but not limited to, their remuneration, any liability for taxation and social security contributions (including the making of proper monthly withholdings of the same and accounting for the*

same to the relevant tax authority by the relevant due dates) and all health and safety and related matters in connection with such Service Staff.

13.2 Subject to clause 7 of these Terms of Provision, the Provider shall indemnify and keep indemnified the Purchasing Authority on demand from and against all Direct Losses that they suffer or incur as a result of:

- (a) any Service Staff making a claim against the Purchasing Authority or breaching any rules, regulations or codes of conduct applicable to them or otherwise causing loss, death, personal injury or damage to any property of the Purchasing Authority or of any Patient or any Third Party; or
- (b) any person making a claim against the Purchasing Authority as a consequence of the conduct of any Service Staff or in relation to any income tax or national insurance contributions arising from the remuneration paid by the Provider to the Service Staff.

13.3 If, as a result of the termination of part or all of the Individual Service Contract or termination of the Providers participation in the IS ECN in accordance with the Rules or of the provision of the Patient Services or performance of the Individual Service Contract, or for any reason, by operation of the Employment Transfer Regulations the contract of employment of any Service Staff has effect or is alleged to have effect, as if originally made between the Purchasing Authority and any such Service Staff then:

- (a) the Purchasing Authority may, within one month of becoming aware of the application, or alleged application, of the Employment Transfer Regulations to any such contract, give notice to terminate such contract (being the minimum notice to which they are entitled by law); and
- (b) the Provider shall indemnify and keep the Purchasing Authority indemnified on demand from and against all Direct Losses incurred or suffered by the Purchasing Authority arising out of or in connection with such transfer, alleged transfer or such termination and against any sums payable to or in relation to such Service Personnel in respect of their employment after the date of the relevant transfer in respect of such Service Personnel to the date of such termination of their contract of employment.

#### 14. **OTHER INSURANCE**

The Provider shall comply with the insurance obligations set out in the Rules.

#### 15. **PROVISION OF INFORMATION**

The Provider shall at all times comply with the Information Requirements.

#### 16. **RECORDS, INSPECTION AND AUDIT RIGHTS**

16.1 Without prejudice to clause 15 of these Terms of Provision, the Provider must keep clear, accurate, complete and up to date records and information relating to:

- (a) all matters relating to the Patient Services and their performance for which records must be kept under the Applicable Laws; and
- (b) the performance of its obligations under the Individual Service Contract including appropriately detailed information regarding all enquiries, claims, settlements, payments, compensation, and systems processes.



*The Provider shall keep and retain the records and information referred to in this clause to the same standards as would be required of a reasonable person providing the Patient Services.*

16.2 *The Provider must on reasonable notice from the Purchasing Authority:*

- (a) *make available to the Purchasing Authority and its representatives any records and information belonging to the Provider and/or any Third Party involved in the provision of the Patient Services which may be relevant in confirming:*
  - (i) *the Provider's compliance with its obligations under the Individual Service Contract; or*
  - (ii) *the calculation of any sums payable by the Purchasing Authority under the Individual Service Contract; and*
  - (iii) *clinical quality indicators including returns to theatre rates, readmission rates, patient satisfaction rates and deep vein thrombosis and pulmonary embolism rates; and*
- (b) *give the Purchasing Authority (and/or the Authority) and its representatives access to the Provider's premises and those of any Third Parties involved in the provision of the Services in order to confirm the Provider's compliance with its obligations under the Individual Service Contract*
- (c) *make available to the Purchasing Authority on request the most recent Equality Impact Assessment.*

16.3 *The Provider must ensure that its staff and the staff of any Third Party involved in the provision of the Patient Services are (in so far as it is reasonable) made available to assist the Purchasing Authority (and/or Authority) in the exercise of its rights under clause 16.2 of these Terms of Provision.*

16.4 *The Provider shall notify the Purchasing Authority (and the Authority) in writing of any change to, breach of, termination of or actual or threatened enforcement action in respect of, its Healthcare Commission Registration*

16.5 *The Provider shall comply with the Purchasing Authority's Serious Untoward Incident policy and reporting requirements which may require completion of the electronic incident form on STEIS.*

## 17. **DISPUTES**

17.1 *All disputes arising out of or in connection with the Individual Service Contract shall be resolved in accordance with the dispute resolution procedure set out in the Rules.*

17.2 *The provisions of clause 17.1 of these Terms of Provision shall not prevent either party from bringing legal proceedings at any time in order to preserve any legal rights or remedies in relation to the subject matter of the dispute.*

## 18. **FORCE MAJEURE**

*Neither party shall be liable to the other for a failure to perform its obligations under the Individual Service Contract due to a Force Majeure Event provided always that if the Provider is unable to perform any of its obligations under the Individual Service Contract as a result of the Force Majeure Event for more than 30 calendar days then Purchasing Authority may terminate the Individual Service Contract at any time and without further liability, upon giving written notice to the Provider.*

**19. TERMINATION**

- 19.1 *Without prejudice to its other rights and remedies an Individual Services Contract may be suspended or terminated by the Purchasing Authority or the Authority in accordance with the suspension and termination procedures set out in the Rules.*
- 19.2 *Without prejudice to its other rights and remedies the Purchasing Authority may terminate all or part of the Individual Service Contract by giving the Provider 5 Business Days written notice.*
- 19.3 *Without prejudice to its other rights and remedies the Purchasing Authority may terminate all or part of the Individual Service Contract by giving the Provider immediate written notice if:*
- (a) the Patient, for whatever, reason, no longer requires or wishes to receive the Patient Services;*
  - (b) a Service Issue Event occurs;*
  - (c) a Suspension Event occurs;*
  - (d) the Provider is suspended in accordance with the Rules pursuant to which it is restricted from providing the Patient Services;*
  - (e) the Provider's IS ECN Participation is terminated (for whatever reason) in accordance with the Rules pursuant to which it is no longer permitted to provide the Patient Services;*
  - (f) the continual provision of the Patient Services will in any way contravene Rule 1.8 of the Rules;*
  - (g) the Provider either breaches a material provision of the Individual Service Contract or breaches the terms of the Individual Service Contract (or any other Individual Service Contract it has entered into with the Purchasing Authority) in a material manner such that it in each case it is either not capable of being remedied or (if it is capable of being remedied) has not been remedied within 10 Business Days of the Provider receiving a written notice from the Purchasing Authority relating to the breach and requiring it to be remedied;*
  - (h) the Provider commits persistent breaches of the Individual Service Contract (or any other Individual Service Contract it has entered into with the Purchasing Authority); or*
  - (i) the Provider becomes Insolvent.*

- 19.4 *A Provider may terminate the Individual Service Contract in accordance with clause 8.5 of these Terms of Provision.*

**20. CONSEQUENCES OF TERMINATION**

- 20.1 *Expiry or termination of the Individual Service Contract does not affect the accrued rights and liabilities of the parties or any other provisions of the Individual Service Contract that are intended to remain in force after its termination.*
- 20.2 *Any express and implied licences that the Provider has under the Individual Service Contract to use any Intellectual Property belonging to the Purchasing Authority will immediately end when this Agreement expires or is terminated.*

20.3 *Following the expiry or termination of the Individual Service Contract the Provider must immediately return to the Purchasing Authority (or its designated nominee) or destroy at the Purchasing Authority's request:*

- (a) *all the property in its possession or under its control that belongs to or was provided to it by or on behalf of the Purchasing Authority;*
- (b) *all copies of any materials and records of any kind that are in its possession or under its control (and in any medium) that contain any part of the Confidential Information except that the Provider may retain a copy of any Confidential Information that it reasonably requires for its accounting purposes or to comply with any Applicable Laws;*
- (c) *all original (and any copies) of Patient Records.*

## 21. **CONFIDENTIALITY AND ANNOUNCEMENTS**

21.1 *Except as provided in clauses 21.3 and 21.5 of these Terms of Provision, the Provider must:*

- (a) *keep the NHS Confidential Information strictly confidential;*
- (b) *not use, reproduce or record in any medium or form any of the NHS Confidential Information except to the extent that it is strictly necessary for the proper purposes of this Agreement; and*
- (c) *not disclose the NHS Confidential Information to any Third Party (other than the Authority).*

21.2 *Except as provided in clause 21.5 of these Terms of Provision, the Purchasing Authority must:*

- (a) *keep the Provider's Confidential Information strictly confidential;*
- (b) *not use, reproduce or record in any medium or form any of the Provider's Confidential Information except to the extent that it is strictly necessary for the proper purposes of these Rules; and*
- (c) *not disclose the Provider's Confidential Information to any Third Party.*

21.3 *The Provider must limit access to the NHS Confidential Information to those of its directors, employees and professional advisers (and to those of its permitted contractors, sub-contractors and agents) who reasonably require the information for the purposes of this Agreement and the Provider must ensure that its directors, employees and professional advisers (and any contractors, sub-contractors and agents that it is permitted to use to provide the Patient Services) keep the NHS Confidential Information strictly confidential.*

21.4 *Except as provided in clause 21.5 of these Terms of Provision, the Provider must not:*

- (a) *release any press statement regarding its relationship with the Purchasing Authority;*
- (b) *disclose the existence of the Individual Service Contract or any of its provisions; or*
- (c) *make any announcement relating to the relationship of the parties;*

*without the Purchasing Authority's prior written consent.*

21.5 *The obligations of confidentiality imposed in clauses 21.1 and 21.2 of these Terms of Provision do not apply to any NHS Confidential Information or Provider Confidential Information that:*

- (a) *is or comes into the public domain otherwise than through any disclosure prohibited by the Individual Service Contract or the Rules; or*
- (b) *in respect of the NHS Confidential Information, the Provider is required to disclose by law or by any governmental or other regulatory authority (including the rules of any stock exchange or listing authority) and the Provider must give the other at least 5 Business Days advance written notice of any intended disclosures of this sort unless it is legally prohibited from doing so; or*
- (c) *in respect of the Provider Confidential Information, the Purchasing Authority is required to disclose by law or by any governmental or other regulatory authority (including but not limited to the Freedom of Information legislation and the Purchasing Authority will use its reasonable endeavours to give the Provider advance written notice of any intended disclosures of this sort unless it is legally prohibited from doing so; or*
- (d) *is relevant to, and such disclosure is strictly necessary in administering the Individual Service Contract or the IS ECN or the performance of the Appointed Services in respect of the Patient in accordance with the Individual Service Contract.*

21.6 *The Purchasing Authority (or the Authority) will make all press statements and other announcements regarding the Individual Service Contract and/or any of its contents and the Provider shall promptly provide the Purchasing Authority (or the Authority) with any information and assistance it may require for this purpose.*

## 22. **NOTICES**

22.1 *All notices under the Individual Service Contract (including without limitation notification of any Service Consents given by a party to the Individual Service Contract) shall be in writing and in the English language and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by e-mail, first class post, facsimile or by hand, leaving the same at:*

- (a) *If to the Provider, the contact details as determined in accordance with the Rules.*
- (b) *If to the Purchasing Authority, to the Chief Executive at the latest postal address and fax number as published on the Purchasing Authority's website; and copied to the Authority marked for the attention of the IS ECN Contract Manager at the Authority's address and fax number for notices as determined in accordance with Rule 19.1(b).*

22.2 *Notices:*

- (a) *by way of e-mail shall be effective when sent in legible form, but only if, following transmission, the sender does not receive a non-delivery message;*
- (b) *given by post shall be effective upon the earlier of: (i) actual receipt, and (ii) five (5) Business Days after mailing;*
- (c) *delivered by hand shall be effective upon delivery; and*
- (d) *given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where*

*there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:*

- (i) within two (2) hours after sending, if sent on a Business Day between the hours of 9 a.m. and 4 p.m.; or*
- (ii) by 11 a.m. on the next following Business Day, if sent after 4 p.m. on a Business Day (but before 9 a.m. on that next following Business Day).*

**23. INTEREST**

*Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of the Individual Service Contract on the date on which such sums are payable in accordance with the Individual Service Contract calculated from day to day at a rate per annum equal to the Interest Rate from the day after the date on which payment was due up to and including the date of payment.*

**24. MITIGATION**

*Each of party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other pursuant to the Individual Service Contract.*

**25. ASSIGNMENT AND SUBCONTRACTING**

*25.1 Subject to clause 25.2 of these Terms of Provision, the Provider must not assign, licence or otherwise transfer any of its rights, obligations or liabilities under or in connection with the Individual Service Contract without the Purchasing Authority's (and the Authority's) prior written consent and this prohibition shall include the Provider not:*

- (a) licensing or sub-licensing any of its rights; or*
- (b) contracting out, sub-contracting, or using agents to perform of any of its obligations.*

*25.2 The Provider may subcontract the provision of the relevant Patient Services to an Approved Sub-contractor provided always that the Provider shall remain fully responsible and liable in respect of those Patient Services at all times.*

*25.3 Without prejudice to clause 25.1 and clause 25.2 of these Terms of Provision, the Provider shall ensure that no IS ECN Conduct whatsoever are carried out in the United States of America, including, for the avoidance of doubt, the export of Data and Personal Data to the United States of America.*

**26. CHANGE IN CONTROL**

*26.1 The Provider shall not at any time permit or procure a Change in Control to occur in respect of it (or an Approved Sub-Contractor other than in accordance with the Rules).*

*26.2 Notwithstanding any other provision of the Individual Service Contract the Provider shall not at any time permit a Restricted Person to hold five (5) per cent or more of the total value of any Securities in it or in an Approved Sub-Contractor.*

**27. NO PARTNERSHIP OR AGENCY**

*Nothing in the Individual Service Contract shall be construed as creating a partnership or a contract of employment between the parties, and save as expressly provided otherwise in this Agreement, the Provider shall not:*

- (a) *be, or be deemed to be, an agent of the Purchasing Authority; or*
- (b) *hold itself out as having authority or power to bind the Purchasing Authority in any way.*

**28. COSTS AND EXPENSES**

*Each party must bear its own legal and other costs and expenses in relation to the negotiation, preparation, execution and implementation of the Individual Service Contract.*

**29. WAIVER**

*Any relaxation, forbearance, indulgence or delay of any party in exercising any right under the Individual Service Contract shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any such relaxation, forbearance, indulgence or delay constitute a waiver of any other right (whether against that party or any other person).*

**30. SEVERABILITY**

*If any provision of the Individual Service Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Individual Service Contract.*

**31. ENTIRE AGREEMENT**

*Other than as expressly set out in these Terms of Provision, all other terms and conditions pursuant to which the Provider purports to provide the Patient Services including any terms and conditions contained in, attached to or referred to in the Provider's invoice are expressly excluded and shall not apply.*

**32. AMENDMENTS TO THE AGREEMENT**

*The Individual Service Contract may not be varied except by an agreement in writing executed as a deed by duly authorised representatives of each of the parties.*

**33. THIRD PARTIES**

*Save in respect of the indemnities or other rights expressed to be given in favour of the Authority or the Patient or any Other NHS Party (including but not limited to the rights under clause 4.4 of these Terms of Provision) and unless otherwise expressly provided to the contrary in the Individual Service Contract, a person who is not a party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of the Individual Service Contract. Notwithstanding any term of the Individual Service Contract, the consent of any person who is not a party is not required to rescind or vary the Individual Service Contract at any time.*

**34. HUMAN RIGHTS**

*In the course of performing the Individual Service Contract all parties shall give all due regard to the provisions of the Human Rights Act 1998 and the Provider shall comply with the provisions of such Act as if it were a public authority (as such term is defined within the Human Rights Act 1998).*

**35. GOVERNING LAW AND JURISDICTION**

- 35.1** *The Individual Service Contract shall be considered as a contract made in England and shall be subject to the laws of England.*

35.2 *Subject to Rule 15 of the Rules, the parties submit to the exclusive jurisdiction of the courts of England and Wales, waive any and all objections to such jurisdiction, accept service of process in England and Wales, waive any and all objections to compulsory process requiring the appearance of witnesses and the production of documents, and consent to full faith and credit for any judgment obtained against them in the courts of England and Wales.*

## **SCHEDULE 3**

### **PART A: PATIENT EXCLUSION GROUP**

The following patient groups are excluded for the purpose of these Rules:

- Any person under the age of 18 years old; and
- Any patient with an American Society of Anaesthesiologists (ASA) score of 3 (who is unstable), unless the appropriate critical care facilities that meet the “Levels of Critical Care for Adult Patients” Standards and Guidelines (Intensive Care Society 2002) are available.
- Any patient with an ASA score higher than 3 (whether stable or unstable), unless the appropriate critical care facilities that meet the “Levels of Critical Care for Adult Patients” Standards and Guidelines (Intensive Care Society 2002) are available.
- A patient who has a current and significantly unstable psychiatric disorder where the Approved Facility cannot reasonably be expected to accommodate the patient’s needs.

### **PART B: PROCEDURE EXCLUSION GROUP**

The following procedure groups are excluded for the purpose of these Rules:

- clinically urgent procedures (being patients that require surgery within 10 days for a clinical reason);
- procedures related to maternity services;
- termination of pregnancy;
- surgery indicated to be for cosmetic reasons;
- any procedure that is likely to require critical care, unless the appropriate critical care facilities that meet the “Levels of Critical Care for Adult Patients” Standards and Guidelines (Intensive Care Society 2002) are available; and
- in vitro fertilisation treatment for a patient that exceeds the number of procedures that would in the same circumstances be offered to that patient in his/her local NHS area or which is not in compliance with the licensing regulations laid down by the Human Fertilisation and Embryology Authority (HFEA).



## SCHEDULE 4

### FORM OF MEMBERSHIP AGREEMENT

#### IS ECN Membership Agreement

**This Deed** is made on: [Insert Date]

Between

**Authority:** Secretary of State for Health of Richmond House, 79 Whitehall,  
London SW1A 2NS.

and

**Provider:** [Insert details]

#### **It is Agreed:**

- The Authority invited tenders from the independent sector for the participation in the "Extended Choice Network".
- Following the tender process, the Provider has been selected for membership of the IS ECN. The Rules for Participants in the Independent Sector Extended Choice Network (the "**Rules**") shall govern the Provider's participation in the IS ECN.
- A copy of the Rules is attached to this Membership Agreement
- The Authority has agreed to permit the Provider to participate in the IS ECN in accordance with the Rules.
- The Provider has agreed to supply services as part of the IS ECN in accordance with the Rules.
- The Authority and the Provider agree to comply with the Rules which are legally binding upon them.

#### **The Approved Facilities**

For the purpose of the Provider's IS ECN Participation the Provider is permitted to provide the Appointed Services at the facilities set out in the annex attached to this Membership Agreement.

#### **The Approved Sub-Contractors**

For the purpose of the Provider's IS ECN Participation the Appointed Services may be provided by the specified service providers as set out below:

[Insert details]

**Executed as a deed** by the parties or their duly authorised representatives on the date of this Agreement

<b>The Corporate Seal</b> of the <b>Secretary of State for Health</b> was affixed to this Deed in the presence of:	) ) )
Signature of a member of Senior Civil Service (Department of Health)	
Name:	

Executed as a deed by <b>[The Provider]</b> acting by two directors or by a director and its secretary	) ) ) )
Director Name:	
Director/Secretary Name:	

**ANNEX TO MEMBERSHIP AGREEMENT**

<b>No.</b>	<b>Approved Facilities of the Provider</b>	<b>Nearest Acute Trust of Foundation Trust from PbR list of MFFs to the Approved Facilities</b>
1.	[•]	[•]
2.	[•]	[•]
3.	[•]	[•]

## SCHEDULE 5

### INFORMATION REQUIREMENTS

#### 1. Information Catalogue

- 1.1. The Provider shall comply with all information reporting requirements for Independent Sector Organisations as listed in the Information Catalogue.
- 1.2. The Provider shall comply with all changes to the requirements listed in the Information Catalogue as specified in a DSCN or otherwise
- 1.3. The Provider shall comply with the National Programme for Patient Reported Outcome Measures.

#### 2. NHS Data Dictionary

- 2.1. The Provider shall comply with all relevant schema and data format standards listed in the NHS Data Dictionary.
- 2.2. The Provider shall comply with all changes to the NHS Data Dictionary as specified in a DSCN or otherwise.

#### 3. Commissioning Data Sets

- 3.1. The Provider shall submit CDS6 returns of the appropriate type, as defined in the Information Catalogue and NHS Data Dictionary, for all Activity performed pursuant to the Rules.

#### 4. Clinical Data Sets

- 4.1. The Provider shall submit Clinical Data Set returns of the appropriate type, as defined in the Information Catalogue and NHS Data Dictionary, for all Activity performed pursuant to the Rules.

#### 5. Central Management Information

- 5.1. The Provider shall submit all appropriate Central Management returns, as defined in the Information Catalogue and NHS Data Dictionary, via the Unify2 system.

#### 6. Other Management Information

- 6.1. The Provider shall submit all information reasonably required by the Purchasing Authorities or the Department of Health to support performance management of NHS services.

#### 7. Timeliness

- 7.1. The Provider shall submit all Information Requirements in accordance with NHS reporting timetables and deadlines as advised by the Department of Health from time to time.

#### 8. Ethnicity Coding

- 8.1. The Provider shall regard an ethnicity code field, in a template that is required to complete an Information Return, as a mandatory requirement (eg DSCN 11 2008).

## SCHEDULE 6

### IM&T REQUIREMENTS

#### Part A: Introduction

1. The Provider shall meet the IM&T Requirements fully when it complies in all respects with the IM&T Service Requirements (as described in Part B below) as evidenced by producing evidence to pass the IM&T Tests (as described in Part C below).

#### Part B: IM&T Service Requirements

##### 2. Provision of IM&T Services

- 2.1 The Provider shall at its own cost, be solely responsible for providing (or procuring the provision by Provider Parties of) the IM&T Services so as to support the delivery of the Appointed Services in accordance with the Rules and ensuring that the IM&T Services are provided in accordance with the IM&T Standards (as specified in Part D below).
- 2.2 The Provider shall appoint an IM&T Lead to support and oversee the implementation of the IM&T Services and to ensure proper management of the IM&T Services during the Term of the Membership Agreement.
- 2.3 The Provider shall apply industry best practice to the design, development, deployment, maintenance and operation of the IM&T Services and shall perform the IM&T Services so as to co ordinate with and not interfere with the operations of the Authority, each Purchasing Authority and the National Application Service Providers (NASPs), National Infrastructure Service Providers (NISPs) and Local Service Providers (LSPs).
- 2.4. The Provider shall at its own cost, maintain the Provider's Systems so as to meet any additional requirements in order to comply with changes to NHS technical or data standards including but not limited to standards issued by the Information Standards Board, Data Set Changes Notices published by the NHS and new Connecting for Health (CfH) compliance requirements.

##### 3. IM&T Infrastructure Requirements

###### 3.1 N3 Connection

The Provider shall procure an N3 connection of sufficient capacity and resilience to deliver the IM&T Services in accordance with the provisions of this Agreement.

###### 3.2 ODS Registration (previously known as NACS Registration)

The Provider shall register with the Organisational Data Service (ODS) for an Organisational Code; and for an Organisational Site Code for each site where NHS services will be delivered under this Agreement.

###### 3.3 NHSmail Email Account(s)

The Provider shall register for NHS mail email accounts as required to provide secure email services for the transmission of patient identifiable data.

### 3.4 Secondary Uses Service

- 3.4.1 The Provider shall register with SUS to enable the submission of CDS returns as required under Schedule 5 of this Agreement.
- 3.4.2 The Provider shall provide (or procure the provision by Provider Parties of) the IM&T Services required to enable submission of CDS returns to SUS.

### 3.5 Unify2

- 3.5.1 The Provider shall register with Unify2 to enable the submission of Information Requirements as required under Schedule 5 of the Rules.

### 3.6 Patient Administration System

- 3.6.1 The Provider shall provide a PAS capable of supporting the production of Information Requirements.
- 3.6.2 The Provider shall provide a PAS capable of supporting the Direct Booking of appointments through the Choose and Book application.

### 3.7 NHS RA Smartcards

- 3.7.1 The Provider shall ensure that all staff requiring access to the Choose and Book system have access to computers equipped with a smartcard reader.
- 3.7.2 The Provider shall ensure that all staff requiring access to the Choose and Book system are issued with NHS smartcards and appropriate access rights.

### 3.8 NHS Demographic Batch Service (DBS) or Clinical Spine Application (CSA)

The Provider shall ensure that all appropriate staff have access to DBS or CSA.

## **4. Interfaces with NHS Systems**

- 4.1 The Provider shall ensure that its IM&T System includes all applicable interfaces with relevant NHS Systems to enable the Provider to deliver the IM&T Services as set out in this Schedule 6 including, but not limited to:

### 4.2 Choose and Book

The Provider shall provide an interface from its PAS system to the Choose and Book application to enable Direct Booking.

### 4.3 Secondary Uses Service

The Provider shall provide the IM&T infrastructure required to submit CDS returns to SUS.

### 4.4 Picture Archiving and Communication System (PACS)

Any transfer of images to or from NHS systems shall conform with the current CfH Image Sharing Standards as amended from time to time.

## **5. Choose and Book**

### 5.1 Direct Booking

The Provider shall publish Directly Bookable services on the Choose and Book Secondary Care Menu for all the activities it is approved to perform under the Agreement.

### 5.2 Directory of Services

The Provider shall ensure that it obtains prior approval in writing from the Authority for all DOS entries, and any amendments to the same, prior to listing any such DOS entry on the National Menu through the Choose and Book application.

In accordance with the exclusion criteria in Schedule 3, Part A, the Provider shall list the following exclusion criteria verbatim for all DOS entries:

- *“Adult Only”;*
- *“A patient with incapacitating disease that is a constant threat to life”;* and

For DOS entries which can reasonably be expected to result in spinal procedures or those requiring General Anaesthetic, other than where an Approved Facility has a level 2 or 3 High Dependency Unit (HDU) or Intensive Care Unit (ICU):

- *“A patient who is grossly obese with a BMI >35”*

### 5.3 Policies and Procedures

The Provider shall provide documented policies and procedures for the management and operation of Choose and Book in accordance with national guidance, including procedures to support The Appointments Line (TAL) Slot Unavailability Process.

### 5.3 Non Direct Bookings

The Provider shall prepare documented procedures to support Non-Direct Bookings and adhere to the requirements as set out in the Inter-Provider Transfer DSCN (DSCN 44/2007 – DSCN 29/2008)

## **6. Information Governance**

### 6.1 Caldicott Guardian

6.1.1 The Provider shall appoint and register a senior board level clinician as Caldicott Guardian with responsibility for ensuring that the Provider complies with all applicable information security and governance procedures.

6.1.2 The Provider shall comply with the guidance given in The Caldicott Guardian Manual.

### 6.2 Records Management

6.2.1 The Provider and any sub contractor shall comply with the following:

6.2.1.1 Records Management: NHS Code of Practice (Parts 1 and 2)

6.2.1.2 Connecting for Health: Information Governance Toolkit and Information Governance Statement of Compliance (IG SoC)

6.2.1.3 Nursing and Midwifery Council: Guidelines for Records and Record Keeping

6.2.1.4 Data Protection Act 1998

6.2.1.5 Freedom of Information Act 2000

### 6.3 Information Security

6.3.1 The Provider shall submit a plan for achieving certification from a UKAS accredited auditor against ISO 27001:2005 & ISO 27002:2005 which will include:

6.3.2 Completion of a fully scoped independent ISO 27001:2005 & ISO 27002:2005 audit for all aspects of the Services to the Authority within one month of Service Commencement.

6.3.3 Certification against ISO 27001:2005 & ISO 27002:2005 within six months of Service Commencement.

6.3.4 The Provider shall comply with the Data Protection Act 1998, the Access to Medical Records Act and the Care Standards Act in relation to the recording, processing, storing and sharing of personal information, including Personal Data (as defined in the Data Protection Act 1998) and all Patient Information.

6.3.5 The Provider shall be responsible for the security of the Provider's IM&T and shall at all times provide a level of security which:

(a) is in accordance with Good Industry Practice; and

(b) meets any specific security threats to the Provider's Systems

6.3.6 In providing the IM&T Services, the Provider shall take measures to ensure that:

(a) all information exchanged from or via the Provider's IM&T with the Purchasing Authorities' IM&T is subject to continuous virus checking procedures;

(b) all information is secured/backed up appropriately and that it can be retrieved easily and economically in the case of data loss.

### 6.4 Patient Data

All patient identifiable data (including Patient Information) shall be stored and processed in mainland England.

## 7. Miscellaneous

7.1 The Provider shall prepare and maintain an IM&T business continuity plan and disaster recovery plan so as to ensure that patient services can continue with no adverse impact on patient care, in compliance with the NHS information governance requirements and Good Industry Practice.

7.2 The Provider shall prepare and maintain an exit management strategy to support the handover of Patient Information on expiry or termination of the Membership Agreement.

7.3 The Provider shall provide copies of the materials required by paragraphs 7.1 and 7.2 above, on the reasonable request by the Authority or a Purchasing Authority within 10 working days.



### **Part C: IM&T Tests**

- 8.1 The Provider shall pass the IM&T Tests when the Provider shall have conducted and successfully completed all internal IM&T Tests and will have obtained all the necessary Authority compliance certificates and authorities to deploy, including Clinical Authority to Deploy and Technical Authority to Deploy from Connecting for Health.
- 8.2 Internal IM&T Tests shall include but not be limited to:
- Testing of the Provider processes to support the service end to end
  - Testing of The Provider processes to support Non Direct Booking and Direct Bookings
  - Testing of the Provider processes to support rejections, cancellations and DNA

### **Summary Test Evidence**

9. The Provider shall have passed the IM&T Tests when the Provider has conducted and completed all internal IM&T Tests and delivered the required supporting documentation as detailed in the IM&T Checklist in Annex 1 of this Schedule to the satisfaction of the Authority.

### **Part D: IM&T Standards**

- 9.1 The Provider shall comply with all relevant NHS standards, including but not limited to:
- 9.1.1 Clinical Coding Standards
  - 9.1.2 Connecting for Health Clinical Coding Standards, including:
    - 9.1.2.1 OPCS v4.4
    - 9.1.2.2 ICD-10
  - 9.1.3 HRG v3.5 (or current approved version)
  - 9.1.4 Messaging Standards
    - 9.1.4.1 Connecting for Health National Programme Baseline
    - 9.1.4.2 HL7
    - 9.1.4.3 eGIF Technical Standards Catalogue v6.2
    - 9.1.4.4 DICOM
    - 9.1.4.5 SNOMED CT (UK Edition). Where the Provider plans to use Read Codes, they shall be required to migrate to SNOMED CT in line with the requirements of the Purchasing Authority.
- 9.3 The Provider shall comply with all amendments to relevant NHS standards as specified in DSCNs and otherwise.

## Annex 1 - IM&T Checklist

ID#	Task	Requirement	Criteria	Comments
1	PCT / SHA Sponsorship	<p>It is essential that an ISHP has a clear relationship in place with a local NHS organisation or individuals who are commissioning their services and can act as a sponsor.</p> <p>The ISHP will then need to submit a letter signed by a director of the organisation which confirms the sponsorship by the NHS organisation for that ISHP/site to be connected to NHS CFH services.</p>	Provider to arrange for sponsorship letter to be sent to CfH to their satisfaction	Sponsorship required prior to accessing IGSoC & ordering N3 connection
2	ODS Code	Provider will need to complete and submit a form to ODS for processing. It is advised that this is completed at the earliest opportunity as it will be required ahead of orders being placed for an N3 connection.	Provider inform Commissioner of ODS Code (both organisational & site)	Required prior to ordering N3 connection
3	DOS	Completed Directory of Services (DOS) set up for the site for Choose and Book (CAB)	DOS meets CAB criteria	<a href="http://www.directory-of-services.info/">http://www.directory-of-services.info/</a>
4	CAB Training	Provider shall arrange for staff to be adequately trained on the use of Choose and Book (CAB)	Evidence of training submitted	<a href="http://www.chooseandbook.nhs.uk/staff/live/training">http://www.chooseandbook.nhs.uk/staff/live/training</a>
5	NHS Choices	Maintenance of an acceptable entry on NHS UK website ( <a href="http://www.nhs.uk">www.nhs.uk</a> ) for the site providing information for prospective NHS patients.	Acceptable entry on NHS UK website (including photo of site)	Once an ISHP has a registered ODS code you will be given a profile on NHS Choices. ISHPs should contact NHS Choices to gain login details and access to update their profile. NHS Choices can be contacted on: 0845 6504 865 <a href="http://www.nhs.uk">http://www.nhs.uk</a>

6	Caldicott Guardian	ISHPs delivering NHS services are required to appoint a privacy officer who should be a board level clinician.	Caldicott Guardian information received (name, position in company, telephone number, email address, correspondence address)	Some providers have a single organisational Guardian and this is acceptable as long as they can provide an explanation of how this person undertakes their responsibility at the individual site  Information relating to this role is available from: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/caldicott">http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/caldicott</a>
7	IGSoC	Completion of an Information Governance Statement of Compliance (IGSoC).  It is essential that every organisation (ISHPs, suppliers and any sub contractors) with access to patient data meets its IGSoC obligations to the required standards to safeguard NHS CFH services and information for all.	Confirmation from CfH that Provider (and any sub-contractor) has completed IGSoC	Detailed information on the IG compliance requirements for Non-NHS organisations and the IGSoC step by step guide and toolkit can be found using the following web address: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/igsoc/non-nhs">http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/igsoc/non-nhs</a>  Please note that you will be required to have attained IGSoC approval before you can place an order for an N3 connection.
8	N3	Installation of N3 Connection	SIN number from BT and evidence of installation & testing	Further information on the service and options available can be accessed from the following address: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/n3">http://www.connectingforhealth.nhs.uk/systemsandservices/n3</a>  IG SoC & ODS code required prior to ordering N3 connection.

9	GM Letter	Signed letter confirming that the Hospital General Manager for the site has had a briefing on the terms of the Rules, confirms that they understand the terms and conditions and will comply with them and will implement the agreed Policies and Procedures of the standard contract.	Signed letter received	Refer to NHS standard acute contract and guidance: <a href="http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091451">http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_091451</a>
10	NHS Mail	Use of NHSmail is mandatory for the communication of patient identifiable information including contractual activity reports and invoice information.	Evidence of NHS mail set-up	Further information on the service and options available can be accessed from the following address: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/nhsmail">http://www.connectingforhealth.nhs.uk/systemsandservices/nhsmail</a>
11	CDS	The Commissioning Data Sets (CDS), produced in support of commissioning processes, needs to be generated by all providers of healthcare delivering services to the NHS.	Evidence of Provider making a CDS return.  Commissioner should also check with the NHS Information Centre for Health and Social Care (NHS IC) to validate the quality and timeliness of CDS submissions	Links to SUS for CDS returns can be enabled through the use of specialist middleware providers. There are a number of suppliers that are all operating SUS compliant XML translation services. In order to submit CDS returns to SUS, ISHPs will need to implement appropriate middleware from a provider that is capable of attaining the compliance standards for the service.
12	SNOMED CT®	SNOMED CT® is not currently mandated for non-LSP systems in use within the NHS. However, ISHPs should ensure that their suppliers have clear plans for its introduction.	That Provider's Clinical coding process is adequate and has plans to meet future requirements	SNOMED CT® is a clinical terminology standard - the Systematised Nomenclature of Medicine Clinical Terms.  More information is available at: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/data/snomed">http://www.connectingforhealth.nhs.uk/systemsandservices/data/snomed</a>

13	SUS	Secondary Uses Service (SUS) has been developed to provide the single source of comprehensive data to enable a range of reporting and analysis such as 'Referral to Treatment' (RTT) reporting data for 18 weeks for commissioners, providers, strategic health authority and shared services organisations.	Evidence of Provider submitting data to SUS.	<p>The document in the following link includes a summary of the reporting application, how to get training and the Role Based Access Control (RBAC) requirements.  <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/sus/whatsnew/080708.pdf">http://www.connectingforhealth.nhs.uk/systemsandservices/sus/whatsnew/080708.pdf</a></p> <p>For those yet to register who need access to the SUS, please email: <a href="mailto:enquiries@ic.nhs.uk">enquiries@ic.nhs.uk</a> or call The NHS IC contact centre on 0845 300 6016, to request log-in details.</p>
14	Unify2	<p>Some central returns, including waiting time information, are submitted via the UNIFY 2 system.</p> <p>The provider must complete and submit UNIFY 2 returns as listed in the information catalogue:  <a href="http://www.icapp.nhs.uk/infocat/">http://www.icapp.nhs.uk/infocat/</a></p> <p>The Unify home page can be found at the following address:  <a href="http://nww.unify2.dh.nhs.uk/Unify/interface/homepage.aspx">http://nww.unify2.dh.nhs.uk/Unify/interface/homepage.aspx</a></p>	Evidence of Provider submitting data to Unify2	<p>More information can be found at:  <a href="http://www.ic.nhs.uk/about-us/ourpriorities/independent-sectorinformation-programme/support-andguidance">http://www.ic.nhs.uk/about-us/ourpriorities/independent-sectorinformation-programme/support-andguidance</a></p> <p>Access to this address requires a Unify2account and password. Any queries about the site can be addressed to The IC helpdesk by emailing: <a href="mailto:enquiries@ic.nhs.uk">enquiries@ic.nhs.uk</a></p>
15	SmartCards	NHS CRS Smartcards help control who accesses the NHS CRS and what level of access that they can have.	Confirmation from Provider of Smartcard set-up and RA service provision	<p>smartcards are required to access CAB</p> <p><a href="http://www.connectingforhealth.nhs.uk/systemsandservices/rasmartcards">http://www.connectingforhealth.nhs.uk/systemsandservices/rasmartcards</a></p>
16	NPfIT compliance	New and existing services and systems are required to attain and maintain the standards and requirements specified for the NPfIT for the access to, transfer and storage of the information required in the delivery and reporting of patient care.	<p>Confirmation from CfH that Provider has system compliance</p> <p>Details of PAS provider and compliant version</p>	In parallel to the attainment of IGSoc compliance and installation of the N3 service, support and guidance will be provided from NHS CFH in the planning of the release and deployment approach for the integration to the NPfIT.

<b>17</b>	TAL (The Appointment Line)	All new services and existing services are required to set up	Provider to nominate a contact and set up a TAL email address/addresses to support slot unavailability.	Dedicated nhs.net account and contact in place to manage slot unavailability  Attached guidance on setting up an nhs mail account: <a href="http://www.connectingforhealth.nhs.uk/systemsandservices/nhsmail/signup">http://www.connectingforhealth.nhs.uk/systemsandservices/nhsmail/signup</a>  General guidance about the Appointment Slot Issues Process:  <a href="http://www.chooseandbook.nhs.uk/staff/newspolicy/new-guidance">http://www.chooseandbook.nhs.uk/staff/newspolicy/new-guidance</a> < <a href="http://www.chooseandbook.nhs.uk/staff/newspolicy/new-guidance">http://www.chooseandbook.nhs.uk/staff/newspolicy/new-guidance</a> >
<b>18</b>	Confirmation letter	A letter on company headed paper to confirm that the Provider has successfully completed all internal IM&T tests.	Provider Head of IM&T or CEO confirmation of successfully completion of Internal IM&T testing.	The letter should provide the title, reference number, version and date of the test specification/test procedures used to govern the IM&T tests and a summary of the tests undertaken.

**SCHEDULE 7**

**LIST OF CLINICAL SERVICES**

<b>Final HRG</b>	<b>HRG Label - Including Split</b>	<b>Limitations</b>
AA09Z	Intracranial Procedures Except Trauma with Other Diagnoses - category 4	<b>Only:</b> A09.1, A09.2, A09.4, A10.7, A57.5, A57.7 & A57.8
AA18Z	Intracranial Procedures Except Trauma with Brain Tumours or Cerebral Cysts - category 1 or 2	<b>Only:</b> A03.3, A03.8 & A03.9
AA19Z	Intracranial Procedures Except Trauma with Cerebral Degenerations or Miscellaneous Disorders of Nervous System - category 1 or 2	<b>Only:</b> A03.3, A03.8 & A03.9
AA20Z	Intracranial Procedures Except Trauma with Muscular, Balance, Cranial or Peripheral Nerve disorders; Epilepsy; Head Injury - category 1 or 2	<b>Only:</b> A03.3, A03.8, A03.9 & A31.3
AA21Z	Intracranial Procedures Except Trauma with Other Diagnoses - category 1 or 2	<b>Only:</b> A03.3, A03.8, A03.9, A73.8, A84.1, A84.2 & A84.3
AB02Z	Complex Major Pain Procedures	
AB03Z	Complex Pain Procedures	
AB04Z	Major Pain Procedures	
AB05Z	Intermediate Pain Procedures	
AB06Z	Minor Pain Procedures	
BZ01Z	Enhanced Cataract Surgery	
BZ02Z	Phacoemulsification Cataract Extraction and Lens Implant	
BZ03Z	Non-Phacoemulsification Cataract Surgery	
BZ04Z	Lens Capsulotomy	
BZ05Z	Oculoplastics category 3	
BZ06A	Oculoplastics category 2: 19 years and over	
BZ07A	Oculoplastics category 1: 19 years and over	
BZ08A	Orbits / lacrimal category 3: 19 years and over	
BZ09A	Orbits / lacrimal category 2: 19 years and over	
BZ10A	Orbits / lacrimal category 1: 19 years and over	
BZ11Z	Cornea / Sclera - category 3	
BZ12Z	Cornea / Sclera - category 2	
BZ13Z	Cornea / Sclera - category 1	
BZ14A	Ocular Motility category 3: 19 years and over	
BZ15A	Ocular Motility category 2: 19 years and over	
BZ16A	Ocular Motility category 1: 19 years and over	
BZ17Z	Glaucoma - category 3	
BZ18Z	Glaucoma - category 2	
BZ19Z	Glaucoma - category 1	
BZ20Z	Vitreous Retinal Procedures - category 4	
BZ21Z	Vitreous Retinal Procedures - category 3	
BZ22Z	Vitreous Retinal Procedures - category 2	
BZ23Z	Vitreous Retinal Procedures - category 1	
CZ01V	Minor Mouth Procedures 19 years and over with CC	
CZ01Y	Minor Mouth Procedures 19 years and over without CC	
CZ02W	Intermediate Mouth Procedures 19 years and over with Major CC	
CZ02X	Intermediate Mouth Procedures 19 years and over with Intermediate CC	
CZ02Y	Intermediate Mouth Procedures 19 years and over without CC	

CZ03V	Major Mouth Procedures 19 years and over with CC	
CZ03Y	Major Mouth Procedures 19 years and over without CC	
CZ04O	Complex Major Mouth Procedures with Major CC	
CZ04P	Complex Major Mouth Procedures with Intermediate CC	
CZ04Q	Complex Major Mouth Procedures without CC	
CZ05V	Tonsillectomy 19 years and over with CC	
CZ05Y	Tonsillectomy 19 years and over without CC	
CZ06N	Minor Throat Procedures with CC	
CZ06Q	Minor Throat Procedures without CC	
CZ08V	Minor Ear Procedures 19 years and over with CC	
CZ08Y	Minor Ear Procedures 19 years and over without CC	
CZ09V	Intermediate Ear Procedures 19 years and over with CC	
CZ09Y	Intermediate Ear Procedures 19 years and over without CC	
CZ10V	Major Ear Procedures 19 years and over with CC	
CZ10Y	Major Ear Procedures 19 years and over without CC	
CZ12V	Minor Nose Procedures 19 years and over with CC	
CZ12Y	Minor Nose Procedures 19 years and over without CC	
CZ13V	Intermediate Nose Procedures 19 years and over with CC	
CZ13Y	Intermediate Nose Procedures 19 years and over without CC	
CZ14V	Major Nose Procedures 19 years and over with CC	
CZ14Y	Major Nose Procedures 19 years and over without CC	
CZ15N	Complex Major Nose Procedures with CC	
CZ15Q	Complex Major Nose Procedures without CC	
CZ16N	Minor Maxillo-facial Procedures with CC	
CZ16Q	Minor Maxillo-facial Procedures without CC	
CZ17V	Intermediate Maxillo-facial Procedures 19 years and over with CC	
CZ17Y	Intermediate Maxillo-facial Procedures 19 years and over without CC	
CZ18R	Major Maxillo-facial Procedures 19 years and over	
DA02	Direct Access Transthoracic Echocardiogram	
DZ02A	Complex Thoracic Procedures with Major CC	
DZ02B	Complex Thoracic Procedures with CC	
DZ02C	Complex Thoracic Procedures without CC	
DZ03A	Major Thoracic Procedures with CC	
DZ03B	Major Thoracic Procedures without CC	
DZ04A	Intermediate Thoracic Procedures with CC	
DZ04B	Intermediate Thoracic Procedures without CC	
DZ05Z	Other Thoracic Procedures	
DZ06Z	Minor Thoracic Procedures	
DZ07Z	Fibre optic Bronchoscopy	
DZ08Z	Rigid Bronchoscopy	
EA03Z	Pace 1 - Single chamber or Implantable Diagnostic Device	
EA04Z	Pace 1 - Single chamber or Implantable Diagnostic Device and other (Catheterisation; EP; Ablation; Percutaneous Coronary Intervention)	
EA05Z	Pace 2 - Dual Chamber	
EA06Z	Pace 2 - Dual Chamber and other (Catheterisation; EP; Ablation; PCI)	
EA07Z	Pace 3 - Biventricular and all congenital pacemaker Procedures - Resynchronisation Therapy	
EA09Z	Congenital Interventions: Percutaneous transluminal ASD/VSD/PFO closure and valve insertion	
EA10Z	Congenital Interventions: Balloon valve intermediate interventions and arterial duct closure	
EA11Z	Congenital Interventions: Other including Septostomy, Embolisations, Non-coronary Stents and Energy Moderated Perforation	
EA12Z	Implantation of Cardioverter - Defibrillator only	
EA13Z	Implantation of Cardioverter - Defibrillator with other Procedures	
EA14Z	Coronary Artery Bypass Graft (First Time)	



EA15Z	Coronary Artery Bypass Graft (First Time) with Cardiac Catheterisation	
EA16Z	Coronary Artery Bypass Graft (First Time) with Percutaneous Coronary Intervention, Pacing, EP or RFA +/- Catheterisation	
EA17Z	Single Cardiac Valve Procedures	
EA18Z	Single Cardiac Valve Procedures with Catheterisation	
EA19Z	Single Cardiac Valve Procedures with Percutaneous Coronary Intervention, Pacing, EP or RFA +/- Catheterisation	
EA20Z	Other Complex Cardiac Surgery and Re-do's	
EA21Z	Other Complex Cardiac Surgery with Catheterisation	
EA22Z	Other Complex Cardiac Surgery with Percutaneous Coronary Intervention, Pacing, EP or RFA +/- Catheterisation	Excluding emergency procedures
EA27Z	Standard EP or Ablation	
EA28Z	Standard EP or Ablation with Catheterisation or Percutaneous Coronary Intervention	
EA29Z	Complex Ablation (includes Atrial Fibrillation or Ventricular Tachycardia)	
EA30Z	Complex Ablation (includes Atrial Fibrillation or Ventricular Tachycardia) with Catheterisation or Percutaneous Coronary Intervention	
EA31Z	Percutaneous Coronary Intervention (0-2 Stents)	
EA32Z	Percutaneous Coronary Intervention (0-2 stents) and Catheterisation	
EA33Z	Percutaneous Coronary Interventions with 3 or more Stents	
EA34Z	Percutaneous Coronary Interventions with 3 or more Stents and Catheterisation	
EA35Z	Other Transluminal Percutaneous Interventions	
EA36Z	Catheter 19 years and over	
EA39Z	Pacemaker Procedure without Generator Implant (includes resiting and removal of cardiac pacemaker system)	
EA40Z	Other Non-Complex Cardiac Surgery	
EA41Z	Other Non-Complex Cardiac Surgery + Catheterisation	
EA42Z	Other Non-Complex Cardiac Surgery + other (includes PCI; Pacing; EP; RFA +/- Catheterisation - not ICD)	
EA44Z	Minor Cardiac Procedures	
EA45Z	Complex Echocardiogram (include Congenital, Transoesophageal and Fetal Echocardiography)	Excluding U20.6
EA46Z	Simple Echocardiogram	
EA47Z	Electrocardiogram Monitoring and stress testing	
FZ03A	Diagnostic and intermediate procedures on the upper GI tract 19 years and over	<b>Excluding:</b> G10.5 G10.8 & G21.5
FZ04A	Very Major Stomach or Duodenum Procedures with Major CC	
FZ04B	Very Major Stomach or Duodenum Procedures without Major CC	
FZ06A	Very Major Small Intestine Procedures with CC	<b>Excluding:</b> G68
FZ06B	Very Major Small Intestine Procedures without CC	<b>Excluding:</b> G68
FZ07A	Major Small Intestine Procedures with CC	
FZ07B	Major Small Intestine Procedures without CC	
FZ08A	Complex Large Intestine Procedures with Major CC	
FZ08B	Complex Large Intestine Procedures without Major CC	
FZ09A	Proximal colon procedures with Major CC	
FZ09B	Proximal colon procedures without Major CC	
FZ10A	Distal colon procedures with Major CC	
FZ10B	Distal colon procedures without Major CC	
FZ11A	Large Intestine - Major Procedures with Major CC	
FZ11B	Large Intestine - Major Procedures without Major CC	
FZ12A	General Abdominal - Very Major or Major Procedures with Major CC	<b>Excluding:</b> 85.5
FZ12B	General Abdominal - Very Major or Major Procedures with Intermediate CC	<b>Excluding:</b> 85.5
FZ12C	General Abdominal - Very Major or Major Procedures without CC	<b>Excluding:</b> 85.5
FZ13A	General Abdominal - Diagnostic Procedures with CC	

FZ13B	General Abdominal - Diagnostic Procedures without CC	
FZ14Z	Complex Procedures for Inflammatory Bowel Disease	
FZ15Z	Major Procedures for Inflammatory Bowel Disease	
FZ17A	Abdominal Hernia Procedures 19 years and over with Major CC	
FZ17B	Abdominal Hernia Procedures 19 years and over with Intermediate CC	
FZ17C	Abdominal Hernia Procedures 19 years and over without CC	
FZ18A	Inguinal Umbilical or Femoral Hernia Repairs 19 years and over with Major CC	
FZ18B	Inguinal Umbilical or Femoral Hernia Repairs 19 years and over with Intermediate CC	
FZ18C	Inguinal Umbilical or Femoral Hernia Repairs 19 years and over without CC	
FZ19Z	Herniotomy Procedures	
FZ20A	Appendectomy Procedures 19 years and over with Major CC	<b>Only:</b> H02.1, H02.2, H02.3 & H02.8
FZ20B	Appendectomy Procedures 19 years and over without Major CC	<b>Only:</b> H02.1, H02.2, H02.3 & H02.8
FZ21Z	Major Anal Procedures	
FZ22A	Intermediate Anal Procedures 19 years and over	
FZ23Z	Minor Anal Procedures	
FZ24A	Major Therapeutic Open or Endoscopic Procedures 19 years and over with Major CC	
FZ24B	Major Therapeutic Open or Endoscopic Procedures 19 years and over with Intermediate CC	
FZ24C	Major Therapeutic Open or Endoscopic Procedures 19 years and over without CC	
FZ25A	Therapeutic Endoscopic or Intermediate Stomach or Duodenum Procedures 19 years and over	
FZ26A	Endoscopic or Intermediate Large Intestine Procedures 19 years and over	
FZ27A	Endoscopic or Intermediate General Abdominal Procedures 19 years and over with Major CC	
FZ27B	Endoscopic or Intermediate General Abdominal Procedures 19 years and over with Intermediate CC	
FZ27C	Endoscopic or Intermediate General Abdominal Procedures 19 years and over without CC	
FZ28A	Endoscopic or Intermediate Procedures for Inflammatory Bowel Disease 19 years and over with CC	
FZ28B	Endoscopic or Intermediate Procedures for Inflammatory Bowel Disease 19 years and over without CC	
FZ30Z	Diagnostic Endoscopic or Intermediate Procedures for Gastrointestinal Bleed	
GA02Z	Hepatobiliary Procedures category 8	
GA03Z	Hepatobiliary Procedures category 7	
GA04Z	Hepatobiliary Procedures category 6	
GA05A	Hepatobiliary Procedures category 5 with CC	
GA05B	Hepatobiliary Procedures category 5 without CC	
GA06Z	Hepatobiliary Procedures category 4	
GA07A	Hepatobiliary Procedures category 3 with CC	
GA07B	Hepatobiliary Procedures category 3 without CC	
GA08A	Hepatobiliary Procedures category 2 with CC	
GA08B	Hepatobiliary Procedures category 2 without CC	
GA09A	Hepatobiliary Procedures category 1 with CC	
GA09B	Hepatobiliary Procedures category 1 without CC	
GA10A	Cholecystectomy with CC	

GA10B	Cholecystectomy without CC	
GB03A	Endoscopic/Radiology category 2 with CC	
GB03B	Endoscopic/Radiology category 2 without CC	
GB04A	Endoscopic/Radiology category 1 with Major CC	
GB04B	Endoscopic/Radiology category 1 with Intermediate CC	
GB04C	Endoscopic/Radiology category 1 without CC	
GB05A	Endoscopic Retrograde Cholangiopancreatography category 3 with CC	
GB05B	Endoscopic Retrograde Cholangiopancreatography category 3 without CC	
GB06A	Endoscopic Retrograde Cholangiopancreatography category 2 with length of stay 3 days or more with Major CC	
GB06B	Endoscopic Retrograde Cholangiopancreatography category 2 with length of stay 3 days or more with Intermediate CC	
GB06C	Endoscopic Retrograde Cholangiopancreatography category 2 with length of stay 3 days or more without CC	
GB06D	Endoscopic Retrograde Cholangiopancreatography category 2 with length of stay 2 days or less	
GB07A	Endoscopic Retrograde Cholangiopancreatography category 1 with length of stay 3 days or more with CC	
GB07B	Endoscopic Retrograde Cholangiopancreatography category 1 with length of stay 3 days or more without CC	
GB07C	Endoscopic Retrograde Cholangiopancreatography category 1 with length of stay 2 days or less	
HA01B	Reconstruction Procedures Category 6 with CC	
HA01C	Reconstruction Procedures Category 6 without CC	
HA02Z	Reconstruction Procedures Category 5	
HA03Z	Reconstruction Procedures Category 4	
HA04B	Reconstruction Procedures Category 3 with CC	
HA04C	Reconstruction Procedures Category 3 without CC	
HA05Z	Reconstruction Procedures Category 2	
HA06Z	Reconstruction Procedures Category 1	
HB11A	Major Hip Procedures for non Trauma Category 2 with Major CC	
HB11B	Major Hip Procedures for non Trauma Category 2 with CC	
HB11C	Major Hip Procedures for non Trauma Category 2 without CC	
HB12A	Major Hip Procedures for non Trauma Category 1 with Major CC	
HB12B	Major Hip Procedures for non Trauma Category 1 with CC	
HB12C	Major Hip Procedures for non Trauma Category 1 without CC	
HB13Z	Intermediate Hip Procedures for non Trauma Category 2	
HB14B	Intermediate Hip Procedures for non Trauma Category 1 with CC	
HB14C	Intermediate Hip Procedures for non Trauma Category 1 without CC	
HB15B	Minor Hip Procedures for non Trauma Category 2 with CC	
HB15C	Minor Hip Procedures for non Trauma Category 2 without CC	
HB16B	Minor Hip Procedures for non Trauma Category 1 with CC	
HB16C	Minor Hip Procedures for non Trauma Category 1 without CC	
HB21A	Major Knee Procedures for non Trauma Category 2 with Major CC	
HB21B	Major Knee Procedures for non Trauma Category 2 with CC	
HB21C	Major Knee Procedures for non Trauma Category 2 without CC	
HB22B	Major Knee Procedures for non Trauma Category 1 with CC	
HB22C	Major Knee Procedures for non Trauma Category 1 without CC	
HB23B	Intermediate Knee Procedures for non Trauma with CC	
HB23C	Intermediate Knee Procedures for non Trauma without CC	
HB24B	Minor Knee Procedures for non Trauma Category 2 with CC	
HB24C	Minor Knee Procedures for non Trauma Category 2 without CC	
HB25A	Minor Knee Procedures for non Trauma Category 1 with Major CC	
HB25B	Minor Knee Procedures for non Trauma Category 1 with CC	
HB25C	Minor Knee Procedures for non Trauma Category 1 without CC	

HB31Z	Major Foot Procedures for non -Trauma	
HB32Z	Intermediate Foot Procedures for non -Trauma Category 2	
HB33B	Intermediate Foot Procedures for Non -Trauma Category 1 with CC	
HB33C	Intermediate Foot Procedures for Non -Trauma Category 1 without CC	
HB34B	Minor Foot Procedures for Non -Trauma Category 2 with CC	
HB34C	Minor Foot Procedures for Non -Trauma Category 2 without CC	
HB35B	Minor Foot Procedures for Non -Trauma Category 1 with CC	
HB35C	Minor Foot Procedures for Non -Trauma Category 1 without CC	
HB41B	Major Arm Procedures for non Trauma with CC	
HB41C	Major Arm Procedures for non Trauma without CC	
HB42B	Intermediate Arm Procedures for non Trauma Category 2 with CC	
HB42C	Intermediate Arm Procedures for non Trauma Category 2 without CC	
HB43B	Intermediate Arm Procedures for non Trauma Category 1 with CC	
HB43C	Intermediate Arm Procedures for non Trauma Category 1 without CC	
HB44B	Minor Arm Procedures for non Trauma Category 2 with CC	
HB44C	Minor Arm Procedures for non Trauma Category 2 without CC	
HB45B	Minor Arm Procedures for non Trauma Category 1 with CC	
HB45C	Minor Arm Procedures for non Trauma Category 1 without CC	
HB51Z	Major Hand Procedures for non Trauma Category 2	
HB52B	Major Hand Procedures for non Trauma Category 1 with CC	
HB52C	Major Hand Procedures for non Trauma Category 1 without CC	
HB53Z	Intermediate Hand Procedures for non Trauma Category 2	<b>Excluding:</b> X08.1 & X08.9
HB54B	Intermediate Hand Procedures for non Trauma Category 1 with CC	
HB54C	Intermediate Hand Procedures for non Trauma Category 1 without CC	
HB55B	Minor Hand Procedures for non Trauma Category 2 with CC	
HB55C	Minor Hand Procedures for non Trauma Category 2 without CC	
HB56B	Minor Hand Procedures for non Trauma Category 1 with CC	
HB56C	Minor Hand Procedures for non Trauma Category 1 without CC	
HB99Z	Other Procedures for non Trauma	
HC01Z	Extradural Spine Major 2	
HC02B	Extradural Spine Major 1 with CC	
HC02C	Extradural Spine Major 1 without CC	<b>Excluding:</b> V37.1 & V37.4
HC03A	Extradural Spine Intermediate 2 with Major CC	
HC03B	Extradural Spine Intermediate 2 with CC	
HC03C	Extradural Spine Intermediate 2 without CC	
HC04A	Extradural Spine Intermediate 1 with Major CC	
HC04B	Extradural Spine Intermediate 1 with CC	
HC04C	Extradural Spine Intermediate 1 without CC	
HC05B	Extradural Spine Minor 2 with CC	<b>Only:</b> V54.2, W06.2, W33.6 & W06.6
HC05C	Extradural Spine Minor 2 without CC	
HC06A	Extradural Spine Minor 1 with Major CC	<b>Only:</b> V52.3
HC06B	Extradural Spine Minor 1 with CC	<b>Only:</b> V52.3
HC06C	Extradural Spine Minor 1 without CC	<b>Only:</b> V52.3
HC07Z	Intradural Spine Major 2	
HC08Z	Intradural Spine Major 1	
HC09Z	Intradural Spine Intermediate 2	
HC10Z	Intradural Spine Intermediate 1	
HC11Z	Intradural Spine Minor 2	
HC12Z	Intradural Spine Minor 1	
JA01Z	Free Perforator Breast Reconstruction	
JA02Z	Free Myocutaneous Breast Reconstruction	
JA03Z	Pedicled TRAM Reconstruction of Breast	

JA04Z	Pedicled Myocutaneous Breast Reconstruction with Insertion of Prosthesis	
JA05Z	Pedicled Myocutaneous Breast Reconstruction without Insertion of Prosthesis	
JA06Z	Major Breast Procedures category 3	
JA07A	Major Breast Procedures category 2 with Major CC	
JA07B	Major Breast Procedures category 2 with Intermediate CC	
JA07C	Major Breast Procedures category 2 without CC	
JA08Z	Major Breast Procedures category 1	
JA09A	Intermediate Breast Procedures with CC	
JA09B	Intermediate Breast Procedures without CC	
JA10Z	Minor Breast Procedures category 2	
JA11A	Minor Breast Procedures category 1 with Major CC	
JA11B	Minor Breast Procedures category 1 with Intermediate CC	
JA11C	Minor Breast Procedures category 1 without CC	
JC01A	Major Multiple Skin Procedures with Major CC	
JC01B	Major Multiple Skin Procedures with Intermediate CC	
JC01C	Major Multiple Skin Procedures without CC	
JC02A	Major Skin Procedures category 2 with Major CC	
JC02B	Major Skin Procedures category 2 with Intermediate CC	
JC02C	Major Skin Procedures category 2 without CC	
JC03A	Major Skin Procedures category 1 with Major CC	Excluding Cosmetic Procedures
JC03B	Major Skin Procedures category 1 with Intermediate CC	Excluding Cosmetic Procedures
JC03C	Major Skin Procedures category 1 without CC	Excluding Cosmetic Procedures
JC04A	Intermediate Skin Procedures with Major CC	Excluding Cosmetic Procedures
JC04B	Intermediate Skin Procedures with Intermediate CC	Excluding Cosmetic Procedures
JC04C	Intermediate Skin Procedures without CC	Excluding Cosmetic Procedures
JC05A	Minor Skin Procedures category 3 with Major CC	Excluding Cosmetic Procedures
JC05B	Minor Skin Procedures category 3 with Intermediate CC	Excluding Cosmetic Procedures
JC05C	Minor Skin Procedures category 3 without CC	Excluding Cosmetic Procedures
JC06A	Minor Skin Procedures category 2 with Major CC	Excluding Cosmetic Procedures
JC06B	Minor Skin Procedures category 2 with Intermediate CC	Excluding Cosmetic Procedures
JC06C	Minor Skin Procedures category 2 without CC	Excluding Cosmetic Procedures

JC07Z	Minor Skin Procedures category 1	Excluding Cosmetic Procedures
JC09Z	Patch Tests	
JC10Z	Investigative procedures 2	
JC12Z	Urticaria tests	
JC14Z	Skin Therapies level 2	
JC15Z	Skin Therapies level 3	
JC16Z	Skin Therapies level 4	
JC17Z	Skin Therapies level 5	
JC18Z	Electrical and other invasive therapy 2	
JC20Z	Electrical and other invasive therapy 3	
KA01A	Major Thyroid Procedures with CC	
KA01B	Major Thyroid Procedures without CC	
KA02Z	Minor Thyroid Procedures	
KA03A	Parathyroid Procedures with CC	
KA03B	Parathyroid Procedures without CC	
KA04Z	Adrenal Procedures	
LB01A	Percutaneous Nephrostomy with CC	
LB01B	Percutaneous Nephrostomy without CC	
LB02A	Kidney Major Open Procedure 19 years and over with Major CC	<b>Excluding:</b> M01.1, M02.3, X45.1 & X45.8
LB02B	Kidney Major Open Procedure 19 years and over with Intermediate CC	<b>Excluding:</b> M01.1, M02.3, X45.1 & X45.8
LB02C	Kidney Major Open Procedure 19 years and over without CC	<b>Excluding:</b> M01.1, M02.3, X45.1 & X45.8
LB03Z	Laparoscopic Operations on Kidney and Ureter	<b>Excluding:</b> M01.1, M02.3, X45.1 & X45.8
LB04A	Kidney Major Endoscopic Procedure with CC	
LB04B	Kidney Major Endoscopic Procedure without CC	
LB05A	Kidney Intermediate Technical, Endoscopic and Percutaneous Interventions 19 years and over with Major CC	
LB05B	Kidney Intermediate Technical, Endoscopic and Percutaneous Interventions 19 years and over with Intermediate CC	
LB05C	Kidney Intermediate Technical, Endoscopic and Percutaneous Interventions 19 years and over without CC	
LB07Z	Ureter Open Procedure	
LB08Z	Ureter Major Endoscopic Procedure	
LB09A	Ureter Intermediate Endoscopic Procedure 19 years and over with CC	
LB09B	Ureter Intermediate Endoscopic Procedure 19 years and over without CC	
LB10Z	Bladder Major Open Procedures / Reconstruction	
LB11Z	Urinary Diversion without Cystectomy	
LB12Z	Bladder Intermediate Open Procedure	
LB13A	Bladder Major Endoscopic Procedure with CC	
LB13B	Bladder Major Endoscopic Procedure without CC	
LB14A	Bladder Intermediate Endoscopic Procedure 19 years and over with Major CC	
LB14B	Bladder Intermediate Endoscopic Procedure 19 years and over with Intermediate CC	
LB14C	Bladder Intermediate Endoscopic Procedure 19 years and over without CC	
LB15A	Bladder Minor Procedure 19 years and over with Major CC	

LB15B	Bladder Minor Procedure 19 years and over with Intermediate CC	
LB15C	Bladder Minor Procedure 19 years and over without CC	
LB21Z	Bladder Neck Open Procedures - Male	
LB22Z	Laparoscopic Bladder Neck Procedures - Male	
LB23Z	Bladder Neck Open Procedures - Female	
LB24Z	Laparoscopic Bladder Neck Procedures - Female	
LB25A	Prostate Transurethral Resection Procedure with Major CC	
LB25B	Prostate Transurethral Resection Procedure with Intermediate CC	
LB25C	Prostate Transurethral Resection Procedure without CC	
LB26Z	Prostate / Bladder Neck Intermediate Endoscopic Procedure - Male and Female	
LB27Z	Prostate or Bladder Neck Minor Endoscopic Procedure - Male, with length of stay 1 day or less	
LB29A	Urethra Major Open Procedures 19 years and over	
LB31Z	Penis Major / Intermediate Open Procedures	
LB32A	Penile Conditions and Minor Procedures 19 years and over with CC	<b>Only:</b> N27.1 to N30.8
LB32B	Penile Conditions and Minor Procedures 19 years and over without CC	<b>Only:</b> N27.1 to N30.8
LB33Z	Vasectomy Procedures	
LB34A	Scrotum, Testis or Vas Deferens Open Procedures 19 years and over with CC	<b>Excluding:</b> N34.1 & N34.2
LB34B	Scrotum, Testis or Vas Deferens Open Procedures 19 years and over without CC	<b>Excluding:</b> N34.1 & N34.2
LB36Z	Extracorporeal Lithotripsy	
LB39A	Cystectomy with Urinary Diversion and Reconstruction with CC	
LB39B	Cystectomy with Urinary Diversion and Reconstruction without CC	
LB43Z	Treatment of Erectile Dysfunction	
MA01Z	Lower and Upper Genital Tract Very Complex Major Procedures	
MA02Z	Lower and Upper Genital Tract Complex Major Procedures	
MA03A	Lower Genital Tract Major Procedures with CC	
MA03B	Lower Genital Tract Major Procedures without CC	
MA04A	Lower Genital Tract Intermediate Procedures with CC	
MA04B	Lower Genital Tract Intermediate Procedures without CC	
MA05A	Lower Genital Tract Minor Procedures with CC	
MA05B	Lower Genital Tract Minor Procedures without CC	
MA07A	Upper Genital Tract Major Procedures without malignancy with CC	
MA07B	Upper Genital Tract Major Procedures without malignancy without CC	
MA08Z	Upper Genital Tract Laparoscopic / Endoscopic Major Procedures	
MA09Z	Upper Genital Tract Laparoscopic / Endoscopic Intermediate Procedures	
MA10Z	Upper Genital Tract Laparoscopic / Endoscopic Minor Procedures	
MA11A	Upper Genital Tract Intermediate Procedures with CC	
MA11B	Upper Genital Tract Intermediate Procedures without CC	
MA12Z	Resection and ablation procedures for intra-uterine lesions	
MA13A	Upper Genital Tract Minor Procedures 19 years and over with CC	<b>Excluding:</b> Q10.1, Q10.2, Q41.1, Q41.2, Q41.4, Q41.5 & Q56.1
MA13B	Upper Genital Tract Minor Procedures 19 years and over without CC	<b>Excluding:</b> Q10.1, Q10.2, Q41.1, Q41.2, Q41.4, Q41.5 & Q56.1
QZ03Z	Bypasses to Tibial Arteries	Excluding emergency procedures

QZ04Z	Extracranial or Upper Limb Arterial Surgery	
QZ05A	Miscellaneous Vascular Procedures with CC	
QZ05B	Miscellaneous Vascular Procedures without CC	
QZ06Z	Varicose Veins with Ulcer or with CC	
QZ07B	Redo Bilateral Varicose Vein Procedures without CC	
QZ08B	Redo Unilateral Varicose Vein Procedures without CC	
QZ09B	Primary Bilateral Varicose Vein Procedures without CC	
QZ10B	Primary Unilateral Varicose Vein Procedures without CC	
QZ12Z	Foot Procedures for Diabetes or Arterial Disease, and Procedures to Amputation Stumps	<b>Only: X11.2 &amp; X11.9</b>
QZ13A	Vascular Access for Renal Replacement Therapy with CC	
QZ13B	Vascular Access for Renal Replacement Therapy without CC	
QZ14A	Vascular Access except for Renal Replacement Therapy with CC	
QZ14B	Vascular Access except for Renal Replacement Therapy without CC	
QZ15A	Therapeutic Endovascular Procedures with Major CC	
QZ15B	Therapeutic Endovascular Procedures with Intermediate CC	
QZ15C	Therapeutic Endovascular Procedures without CC	
QZ16A	Diagnostic Vascular Radiology and other transluminal Procedures with Major CC	
QZ16B	Diagnostic Vascular Radiology and other transluminal Procedures with Intermediate CC	
QZ16C	Diagnostic Vascular Radiology and other transluminal Procedures without CC	





## SCHEDULE 9

### FORM OF STATUS CERTIFICATE

**To:** The Secretary of State for Health  
**From:** [Name of Provider]  
**Date:** [Insert Date]

#### **Rules for Independent Sector Participants in the Extended Choice Network National Menu dated 3 August 2006 (as amended) (the "Rules")**

I refer to the Rules. Terms defined in the Rules have the same meaning herein.

I hereby certify that as at the date of this certificate:

- (1) None of the events specified in the Rules entitling the Authority to suspend or terminate our IS ECN Participation has occurred in relation to us as a Provider, nor to the best of my knowledge, will occur within the next (6) months.
- (2) There has been no Change in Control of the contracting parties other than those permitted under the Rules.
- (3) There has been no change in the Approved Sub-Contractors other than as permitted under the Rules.
- (4) All of the Approved Facilities offering Appointed Services pursuant to the Rules are currently Healthcare Commission registered and there has been no correspondence received from the Healthcare Commission which would indicate that there is a risk of losing or suspending its Healthcare Commission registration within the next six (6) months.
- (5) All of the Approved Facilities offering Appointed Services pursuant to the Rules are currently Choose and Book compliant.
- (6) Either:

I attach details of the following clinical matters, where these details have changed since we submitted our last Status Certificate: ***[list those changed from the following list]***

- i. List of HRGs against our Healthcare Commission registration, our last Healthcare Commission report and action plan arising from the Healthcare Commission's inspection;
- ii. Claims for clinical negligence made against us;
- iii. Our medical specialists with current practising privileged for general Medical Council and specialist registration;
- IV. Quality indicators including: returns to theatre rate; readmission rate; patient satisfaction rates; deep vein thrombosis and pulmonary embolism rates.

**Or**

None of the clinical matters against which we last reported at paragraph 6 of our Status Certificate have changed since our last report.

.....  
**Finance Director**  
[Name of Provider]

## SCHEDULE 10

### CNST CONDITIONS

#### Part 1 – Conditions

1. The Provider acknowledges the provisions of the CNST Requirements and the rights and obligations of the CNST Members and the CNST Administrator under the CNST Requirements.
2. The Provider shall:
  - (a) at its own cost at the request of any Purchasing Authority and/or CNST Member and/or the CNST Administrator:
    - (i) grant full access to the Approved Facilities, all documents, records, computer databases or other property, to premises and to Provider Parties and Service Staff, to the Purchasing Authority and/or CNST Member and/or the CNST Scheme Manager and/or the CNST Administrator at such times and for such purposes as may be lawfully required by them in connection with the CNST or any CNST Claim;
    - (ii) provide to the Purchasing Authority and/or CNST Member and/or the CNST Scheme Manager and/or the CNST Administrator such information as it or they may lawfully require pursuant to the CNST Requirements or otherwise in connection with the CNST and any CNST Claim;
  - (b) at its own cost co-operate fully with and provide such assistance as may be required by each Purchasing Authority and/or CNST Member, the CNST Scheme Manager and the CNST Administrator in respect of any CNST Claim, risk management assessment or any other matter in connection with the CNST and any CNST Member's membership of the CNST;
  - (c) at its own cost comply with all risk management standards developed by the CNST Administrator pursuant to the CNST Requirements;
  - (d) not do or omit to do, and shall procure that no Provider Party shall do or omit to do, anything which may adversely affect the availability of benefits to any CNST Member or the exercise of the discretion of the CNST Administrator to make available any such benefits to any CNST Member pursuant to the CNST Requirements;
  - (e) prior to the commencement of the employment or engagement of any member of Staff to be employed or engaged by the Provider or a Provider Party in the provision of IS ECN Conduct, provide to the Authority a copy of a letter from the Provider addressed to such member of Service Staff in the form set out in Part 4, signed on behalf of the Provider and countersigned by such member of Service Staff; and
  - (f) whenever required by the Authority or the CNST Administrator to do so, submit to the Authority a completed Whole Time Equivalent Form in respect of all Service Staff employed or engaged by the Provider or a Provider Party in the provision of IS ECN Conduct.
3. In relation to CNST Claims:
  - (a) if the Provider receives any notice, demand, letter or other document concerning any CNST Claim or becomes aware of any fact, matter, event or circumstances which may give rise to a CNST Claim, the Provider shall immediately give notice

in writing of such claim (together with a copy of the relevant notice, demand, letter or other document) or fact, matter, event or circumstances to the Authority and the relevant CNST Member;

- (b) on the giving of such a notice by the Provider, the CNST Administrator will assume conduct of the CNST Claim and the CNST Claim and any defence, dispute, compromise or appeal of the claim and any incidental negotiations will be dealt with in accordance with the CNST Requirements at the expense of the CNST. The Provider shall give the Authority, the relevant CNST Member, the CNST Scheme Manager and the CNST Administrator all reasonable co-operation, access and assistance as they may require for the purposes of considering and resisting such claim;
- (c) with respect to any such claim:
  - (i) the Authority shall (and shall procure that the relevant CNST Member) keep the Provider fully informed about material elements of the conduct of the claim; and
  - (ii) the Provider acknowledges and agrees that the CNST Administrator shall be entitled to conduct any claim as it shall see fit and pay or settle such claims on such terms as it shall see fit;
- (d) the Provider shall not, and shall procure that no Provider Party or Service Staff makes any admission of liability, nor any payment of any kind to or in respect of any Patient, in relation to any CNST Claim, without the express written consent of the CNST Administrator;
- (e) if the Authority or a CNST Member or the CNST Administrator pays to the Provider or to any claimant an amount in respect of a CNST Claim and the Provider subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim, the Provider shall forthwith repay to the Authority or the relevant CNST Member or the CNST Administrator (as appropriate) whichever is the lesser of:
  - (i) an amount equal to the sums recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Provider in recovering the same; and
  - (ii) the amount paid to the Provider or the claimant in respect of the claim under the relevant indemnity,

provided always that there shall be no obligation on the Provider to pursue such recovery and that the Authority or the relevant CNST Member or the CNST Administrator (as appropriate) is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Authority or the relevant CNST Member or the CNST Administrator (as appropriate) exceeds any loss sustained by the Provider (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Agreement from being recovered from the Authority or the relevant CNST Member or the CNST Administrator (as appropriate)).

## **Part 2 - Contributions**

4. The Provider acknowledges the provisions of Rule 8 of the CNST Membership Rules (April 2001) (Rule 8) and Regulation 8 of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended).

5. The Authority shall procure that as soon as practicable following the expiry of each Financial Year the CNST Administrator shall determine the amount of any CNST Additional Annual Contribution payable by the Provider. Such CNST Additional Annual Contribution (if any) shall be determined by an actuarial analysis of:
- (a) the number of Valid Bookings made to the Provider pursuant to the IS ECN during the preceding Financial Year;
  - (b) the case mix of such Valid Bookings;
  - (c) the Provider's degree of compliance with CNST General Clinical Risk Management Standards;
  - (d) the number and quantum of claims or potential claims in relation to Patients in respect of clinical or medical negligence on the part of the Provider or any Provider Party during the preceding Financial Year; and
  - (e) the average number and quantum of claims or potential claims in relation to Patients in respect of clinical or medical negligence for comparable case mixes and numbers of referrals covered by the CNST generally during the preceding Financial Year,

provided that no CNST Additional Annual Contribution shall be payable in relation to any Financial Year in respect of which the number and/or quantum of claims or potential claims referred to in sub-paragraph (d) above is not greater than the number and/or quantum of claims or potential claims referred to in sub-paragraph (e) above.

6. The Authority shall procure that as soon as practicable following the expiry of the Membership Period the CNST Administrator shall determine the amount of any CNST Termination Contribution payable by the Provider. Such CNST Termination Contribution (if any) shall be determined by an actuarial analysis of:
- (a) the number of Valid Bookings made to the Provider pursuant to this Agreement during the Membership Period;
  - (b) the case mix of such Valid Bookings;
  - (c) the Provider's degree of compliance with CNST General Clinical Risk Management Standards;
  - (d) the number and quantum of claims or potential claims in relation to Patients in respect of clinical or medical negligence on the part of the Provider or any Provider Party during the Membership Period; and
  - (e) the average number and quantum of claims or potential claims in relation to Patients in respect of clinical or medical negligence for comparable case mixes and numbers of referrals covered by the CNST generally during the Membership Period,

provided that no CNST Termination Contribution shall be payable where the number and/or quantum of claims or potential claims referred to in sub-paragraph (d) above is not greater than the number and/or quantum of claims or potential claims referred to in sub-paragraph (e) above.

7. The CNST Administrator's determination as to the amount of any CNST Additional Annual Contribution or CNST Termination Contribution shall be final and binding on the Parties.

8. The CNST Additional Annual Contribution or CNST Termination Contribution shall be paid to Authority (acting as agent for the relevant CNST Members) by the Provider within ten (10) Business Days of written demand.
9. All sums to be paid or other consideration to be given by the Provider to the Authority pursuant to or in connection with any supply to be made as calculated in accordance with this Part 2 are exclusive of VAT which if properly charged shall be paid by the Provider at the same time as and in addition thereto at the applicable rate, whereafter the Authority shall issue a VAT invoice to the Provider in respect of that supply.

### **Part 3 – CNST Requirements**

The following documents published at <http://www.nhsla.com>

CNST Membership Rules

CNST Reporting Guidelines Third Edition (April 2005)

NHSLA Framework Document (December 2002)

NHS Indemnity: Arrangements for Clinical Negligence Claims in the NHS

NHSLA Circular No: 02/02 “Apologies and Explanations”

NHSLA Clinical Negligence Litigation: A Very Brief Guide for Clinicians (June 2003)

NHSLA Factsheet 1: background information (April 2004)

NHSLA Factsheet 2: financial information (July 2005)

NHSLA Factsheet 3: information on claims (July 2005)

NHSLA Risk Management Standard for Primary Care Trusts (April 2005)

NHSLA Risk Management Standards for Acute Trusts

Whole Time Equivalent Form

CNST Claim report form

#### Part 4 – Form of Staff Letter of Undertaking

[Employee]

[ • ]

Dear [Employee]

[ • ] (the Provider)

You are to be [employed/engaged] by us as a [state clinical capacity] to [provide/assist in the provision of] clinical services at [ • ].

NHS patients treated at the [ • ] will be covered by the Secretary of State for Health's Clinical Negligence Scheme for Trusts (or CNST); essentially, a scheme of self-insurance for clinical negligence for NHS Trusts and Primary Care Trusts. This means that neither we nor you will need to hold medical malpractice insurance in relation to the clinical services we provide to NHS patients.

However, under the contract we have entered into with the Secretary of State for Health, we have accepted a range of obligations in relation to our dealings with patients, our dealings with the NHS Litigation Authority (or NHSLA) (which runs the CNST) and the way in which clinical negligence claims and allegations of clinical negligence by NHS patients are handled. The acceptance of these obligations and our compliance with them is a condition of our getting the benefit of CNST.

We therefore require that, as conditions of your [employment/engagement] by us:

- (a) if you receive any notice, demand, letter or other document concerning any claim or allegation of clinical negligence or if you become aware of anything, event or circumstance which may give rise to a clinical negligence claim or any allegation of clinical negligence, you immediately notify us accordingly and give us a copy of the relevant notice, demand, letter or other document;
- (b) you help and co-operate with us, any NHS body and the NHSLA in any way we or they may require in relation to any clinical negligence claim or any allegation of clinical negligence and the defence of it;
- (c) you do not make any admission of liability, nor make any payment of any kind to or in respect of any patient, in relation to any clinical negligence claim or allegation of clinical negligence without our written consent;
- (d) at our request and/or at the request of any NHS body or the NHSLA;
  - (i) you make yourself available for interview and to appear before any court or tribunal at any time and for any purpose we, any NHS body or the NHSLA may require in connection with the CNST or any clinical negligence claim or allegation of clinical negligence and the defence of it;
  - (ii) you provide any information which we, any NHS body or the NHSLA may require in connection with the CNST or any clinical negligence claim or allegation of clinical negligence or the defence of it;
  - (iii) you co-operate fully with us, any NHS body and the NHSLA and provide whatever help we or they may require in respect of any clinical negligence claim or allegation of clinical negligence or the defence of it, risk management assessment or any other matter in connection with the CNST.



These are obligations which you owe not only to us but also to the NHSLA and to the Secretary of State for Health and NHS bodies. Any of those parties may contact you directly and require you to perform any of these obligations.

Please sign and return to us the attached copy of this letter to confirm your agreement to the conditions above.

Yours sincerely

Part 5 – WTE Form

NHSLA - CNST Contribution Setting Exercise  
Whole Time Equivalents Form - 2005/2006  
Primary Care / Care Trust

INDE	TYPE OF TRUST	Place an 'X' in box(es)			
X					
1	Primary Care Trust				
2	Care Trust				
3	Member Name:				
4	Member Number:	#N/A			
		Other Doctors (inc locums)		Nurse Specialists / Consultants (exc other Nurses)	Total WTE
<b>Obstetrics &amp; Gynaecology Group</b>					
5	Obstetrics				-
6	Gynaecology				-
7	Obstetrics / Gynaecology				-
8	Obstetric High Dependency Unit				-
9	Infertility Unit				-
10	Family Planning				-
11	Midwives budgeted				
12	Midwives actual				
<b>Sub Total</b>		-	-	-	-
13	Number of Registered Hospital Births which are the responsibility of the PCT (April 2003 - March 2004)				
14	Number of Registered Home Births which are the responsibility of the PCT (April 2003 - March 2004)				
<b>Clinical Staff</b>					
15	Directly Employed GPs				-
16	Independently Contracted GPs - GMS & PMS				-
17	Directly Employed Dentists				-
18	Independently Contracted Dentists				-
19	Directly Employed Orthoptists				-
20	Independently Contracted Orthoptists				-
21	Directly Employed Pharmacists				-
22	Independently Contracted Pharmacists				-
23	Prescribing Advisors				-
24	Community Medical Officers				-
25	Associate Specialists				-
26	Specialist Registrars				-
<b>Sub Total</b>		-	-	-	-
<b>General Medicine Group</b>					
27	Audiological Medicine				-
28	Continence / Incontinence				-
29	Dermatology				-
30	Diabetes				-
31	Elderly Medicine				-
32	ENT Medicine				-
33	General Medicine				-
34	Genitourinary Medicine				-
35	Infectious Diseases				-
36	Neurology				-
37	NHS Walk-in Centre				-
38	Occupational Health				-
39	Palliative Medicine				-
40	Parkinson's Medicine / Care				-
41	Pathology				-
42	Podiatry				-
43	Public Health				-
44	Radiology				-
45	Rehabilitation				-
46	Rheumatology				-
47	Urology				-
<b>Sub Total</b>		-	-	-	-



**NHSLA - CNST Contribution Setting Exercise  
Whole Time Equivalents Form - 2005/2006  
Primary Care / Care Trust**

<b>INDE</b>	<b>TYPE OF TRUST</b>	Place an 'X' in box(es)			
X					
1	Primary Care Trust	<input type="checkbox"/>			
2	Care Trust	<input type="checkbox"/>			
3	Member Name:	<input type="text"/>			
4	Member Number:	<input type="text" value="#N/A"/>			

  

		Consultants	Other Doctors (inc locums)	Nurse Specialists / Consultants (exc other Nurses)	Total WTE
<b>Obstetrics &amp; Gynaecology Group</b>					
5	Obstetrics	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
6	Gynaecology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
7	Obstetrics / Gynaecology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
8	Obstetric High Dependency Unit	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
9	Infertility Unit	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
10	Family Planning	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
11	Midwives budgeted				<input type="text"/>
12	Midwives actual				<input type="text"/>
<b>Sub Total</b>		-	-	-	-
13	<b>Number of Registered Hospital Births which are the responsibility of the PCT (April 2003 - March 2004)</b>				<input type="text"/>
14	<b>Number of Registered Home Births which are the responsibility of the PCT (April 2003 - March 2004)</b>				<input type="text"/>
<b>Clinical Staff</b>					
15	Directly Employed GPs	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
16	Independently Contracted GPs - GMS & PMS	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
17	Directly Employed Dentists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
18	Independently Contracted Dentists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
19	Directly Employed Orthoptists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
20	Independently Contracted Orthoptists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
21	Directly Employed Pharmacists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
22	Independently Contracted Pharmacists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
23	Prescribing Advisors	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
24	Community Medical Officers	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
25	Associate Specialists	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
26	Specialist Registrars	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<b>Sub Total</b>		-	-	-	-
<b>General Medicine Group</b>					
27	Audiological Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
28	Continence / Incontinence	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
29	Dermatology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
30	Diabetes	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
31	Elderly Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
32	ENT Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
33	General Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
34	Genitourinary Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
35	Infectious Diseases	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
36	Neurology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
37	NHS Walk-in Centre	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
38	Occupational Health	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
39	Palliative Medicine	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
40	Parkinson's Medicine / Care	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
41	Pathology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
42	Podiatry	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
43	Public Health	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
44	Radiology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
45	Rehabilitation	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
46	Rheumatology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
47	Urology	<input type="text"/>	<input type="text"/>	<input type="text"/>	-
<b>Sub Total</b>		-	-	-	-

**NHSLA - CNST Contribution Setting Exercise  
Whole Time Equivalents Form - 2005/2006  
Primary Care / Care Trust**

<u>INDE</u>	<u>TYPE OF TRUST</u>	Place an 'X' in box(es)
X		
1	Primary Care Trust	<input type="checkbox"/>
2	Care Trust	<input type="checkbox"/>
3	Member Name:	<input type="text"/>
4	Member Number:	#N/A <input type="text"/>

		Total WTE
76	<b>Allied Health Professionals (AHPs) (including Medical Technical Officers)</b>	
	<i>Audiologists</i>	<input type="text"/>
	Chiropodists / Podiatrists	<input type="text"/>
	<i>Counsellors</i>	<input type="text"/>
	<i>Dental Services</i>	<input type="text"/>
	Dietitians	<input type="text"/>
	Drama / Art / Play / Music Therapists	<input type="text"/>
	<i>General Medical Technical Instructors / Officers</i>	<input type="text"/>
	Occupational Therapists	<input type="text"/>
	Orthoptists	<input type="text"/>
	<i>Phlebotomists</i>	<input type="text"/>
	Physiotherapists	<input type="text"/>
	<i>Psychologists &amp; Psychotherapists (Child / Adult / Elderly)</i>	<input type="text"/>
	Radiographers	<input type="text"/>
	Speech & Language Therapists	<input type="text"/>
	<b>Sub Total</b>	-

77	<b>AHPs Not Listed Above</b>	
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<b>Sub Total</b>	-

78	<b>Prison services provided by PCT</b>	
	Prison Nurses	<input type="text"/>
	Please specify other prison services below:	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<b>Sub Total</b>	-

79	<b>Total Whole Time Equivalents</b>	-
----	-------------------------------------	---

80	<b>List of Treatment Centres used</b>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

81	<b>Local Authority Staff Directly Employed / Seconded</b>	
	Care Managers	<input type="text"/>
	Social Workers	<input type="text"/>
	Locality Managers	<input type="text"/>
	Care Assistants	<input type="text"/>

82	Form completed by (Print Name) :	<input type="text"/>
83	Position :	<input type="text"/>
84	Contact Telephone No.	<input type="text"/>
85	Date :	<input type="text"/>

It is the responsibility of the member to inform the NHSLA if new services are acquired following the completion of this form.

## SCHEDULE 11

### MARKETING GUIDELINES

#### 1. GENERAL

- 1.1. The Provider shall not undertake any Marketing Activity, in the sole opinion of the Authority, is unsuitable, inappropriate or would or might damage, reduce or diminish the reputation, image or prestige of the Authority, the NHS or the IS ECN.

#### 2. MARKETING MATERIALS

- 2.1 Patient Brochures shall be written in plain English and in language which is appropriate for and readily comprehensible by the target audience and contain the information set out in Part 2 of this Schedule 11 as applicable.
- 2.2 The Provider shall submit all Marketing Materials to the Authority for approval (such approval not to be unreasonably withheld or delayed) at least 1 month prior to publication, and shall not conduct any Marketing Activity which has not been pre-approved by the Authority.

#### 3. MARKETING ACTIVITY

- 3.1 The Provider shall ensure that its Marketing Activity complies with all applicable laws and regulations, including any self-regulation or advertising codes which applicable to Marketing Activities from time to time.
- 3.2 Without prejudice to paragraph 3.1, the Provider shall ensure that all Marketing Activity complies with the Marketing Code, the NHS Brand Policy and Guideline and all such other instructions or guidance in connection with Marketing Activity as may be issued by the Authority from time to time.
- 3.3 Marketing Activity must not include information or material relating to private healthcare Appointed Services or any product or service offered by the Provider, or a third party, other than the Appointed Services, and not market, advertise or promote (directly or indirectly) private healthcare Appointed Services to NHS Patients within the Approved Facilities.
- 3.4 If at any time any amendment is required pursuant to paragraphs 3.1 and/or 3.2, to any Marketing Material the Provider shall promptly make such amendment, and where such amendment is required to a Patient Brochure, the Provider shall submit revised material to the Authority for approval as soon as reasonably practical.
- 3.5 The Provider shall retain records of all Marketing Activity (including samples of all Marketing Materials) for a period of twelve (12) months from the last date of such Marketing Activity, and make such information available to the Authority for inspection or audit at its reasonable request.
- 3.6 The Provider must notify the Authority immediately, and provide such information as is reasonably required, in relation to any complaints or communications from a regulator in respect of its Marketing Activity.

#### 4. MARKETING CODE AND NHS BRAND POLICY AND GUIDELINES

- 4.1 The Provider shall ensure that its Marketing Activity complies with the Marketing Code and NHS Brand Policy and Guidelines in spirit as well as letter.
- 4.2 In the event of any conflict between this Schedule 11 and the Marketing Code and NHS Brand Policy and Guidelines, this Schedule 11 shall prevail.

4.3 The Authority's interpretation of the Marketing Code and NHS Brand Policy and Guidelines shall be final and the Provider acknowledges and agrees that the Authority shall be entitled to issue a direction in the event that the Authority considers that the Provider is in breach of this Schedule 11. The Provider shall abide by any such direction within the timescales specified in the direction or, if no such timetable is so specified, with immediate effect.

4.4 For the avoidance of doubt, compliance with the Marketing Code does not ensure compliance with applicable laws or with other regulatory and self-regulatory codes.

## **5. REMEDIES**

5.1 In the event of a any non-compliance with the provisions in this Schedule 11, then the Authority, may (without prejudice to any other rights or remedies):

- (a) exercise such remedies as may be set out in the Marketing Code;
- (b) require the Provider to destroy any such Marketing Materials or withdraw such Marketing Materials at the sole cost of the Provider;
- (c) require the Provider to issue a correction in the manner specified by the Authority;
- (d) publicise such non-compliance and the action which the Provider is required to take in respect of such non-compliance in such manner as it determines in its sole discretion;
- (e) restrict or suspend the Provider's right to conduct Marketing Activity.

5.2 The Authority shall be entitled to require the Provider to suspend any Marketing Activity upon the suspension of the Provider's FCN Membership pursuant to Rule 2.

5.3 Patient Brochures shall include but not be limited to:

- (a) a description of the Activities provided at each Approved Facility;
- (b) a general explanation of the referral process and the likely length of stay and the likely time involved for the Activity or length of the appointment;
- (c) general instructions for NHS Patients including information relating to the NHS Patients arrival at the Approved Facilities;
- (d) patient and Provider statistics, including but not limited to and consistent with, those provided in the NHS "Choice" booklets as may be issued from time to time (inpatient waiting times, cancelled operations, outpatient waiting times, MRSA infection rates and the results of patient satisfaction surveys), to the extent relevant to the ISTC Programme, as well as an explanation of each of the statistics;
- (e) logistical information (such as maps detailing the location of Approved Facilities) and telephone contact details to allow NHS Patients to request further information about the Appointed Services; and
- (f) details of where information about the Appointed Services can be found on the Internet.

**SCHEDULE 12**

**NHS TRADEMARK LICENCE**

**TERM SHEET**

<b>Date:</b>	<i>[Insert date on which licence is signed.]</i>			
<b>Parties:</b>				
<b>(1) THE SECRETARY OF STATE FOR HEALTH</b> <b>Address:</b> Richmond House 79 Whitehall London SW1A 2NS	<b>(2) [Insert name of Provider under the Membership Agreement]</b>  <b>Registered office address:</b>  <b>Company number:</b>			
<b>Commencement Date:</b>	Means the date on which the Membership Agreement (as defined below) is signed by both parties.			
<b>Term:</b>	Means the period from the Commencement Date to the termination of the Membership Agreement (as defined therein).			
<b>Membership Agreement:</b>	Means the agreement dated [●] made between the Secretary of State for Health and <i>[Insert name of Provider under the Membership Agreement]</i>			
<b>Trademarks:</b>				
<b>Registered trademarks</b>				
Country	Class	Mark No.	Date of Renewal	Next
UK	16, 35, 41, 42	2139445	17/07/2017	
UK	05, 09, 10, 25, 38, 44, 45	2356641	25/02/2014	
UK	05, 10, 16, 35, 41, 42, 44	2336307	24/06/2013	
UK	25, 38, 45	2353908	21/01/2014	
<b>Trademark Applications</b>				
Country	Class	Mark No.	Date of Application	
<i>[Insert details of applied-for trademark(s) (if any) to be licensed.]</i>				



**THE CORPORATE SEAL**  
of the **SECRETARY OF STATE**  
**FOR HEALTH** was affixed to this  
deed in the presence of

)  
)  
)  
)  
)

.....  
Signature of a member of Senior Civil  
Service (Department of Health)

.....  
(Name of Signatory)

**SIGNED** on behalf of [*Insert name of  
Provider under the Membership  
Agreement*]

)  
)  
)  
)

.....  
Signature of Director & Authorised  
Signatory

.....  
(Name of Signatory)

## General Conditions

### Background

- (A) We are the owner of the Trademarks (as defined below).
- (B) We have agreed to grant You a licence to use the Trademarks, on the terms and conditions set out in this Agreement.

In consideration of the sum of one pound (£1) (receipt of which is acknowledged by Us), We and You **AGREE** as follows:

### 1 Interpretation

1.1 In this Agreement the following expressions shall have the following meanings:

**Additional Uses** means any use other than a Core Use;

**Agreement** means the Term Sheet, these General Conditions and the NHS Brand and Policy Guidelines;

**Appointed Services** means the services to be provided by You under the terms of the Membership Agreement;

**Approval Committee** means the NHS Representative and the Department of Health Branding Team;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open in London for the transaction of business;

**Core Uses** means those uses of the Trademarks which are mandated under the NHS Brand and Policy Guidelines together with any use relating to the provision of the Appointed Services which is reasonably requested by Us from time to time;

**Department of Health Branding Team** means the branding team within the Communications Directorate of the Department of Health;

**General Conditions** means these terms and conditions;

**Membership Agreement** means the agreement in connection with which You are entering into this Agreement, as defined in the Term Sheet;

**NHS Brand and Policy Guidelines** means the guidelines that We make available to You through the website at [www.nhsidentity.nhs.uk](http://www.nhsidentity.nhs.uk) (or by any other means at our sole discretion), which prescribe the permitted form and manner in which the Trademarks may be used, as amended from time to time by or on behalf of Us;

**Territory** means the United Kingdom of Great Britain and Northern Ireland;

**Term** means as defined in the Term Sheet;

**Term Sheet** means the completed "Trademark Licence – Term Sheet" to which these General Conditions are attached;

**Trademarks** means the trademarks and trademark applications (if applicable) set out in the Term Sheet;

**We** shall mean the first party named on the Term Sheet and **Us** and **Our** shall be construed accordingly;

**You** shall mean the second party named on the Term Sheet and **Your** shall be construed accordingly.

1.2 In this Agreement, unless the context otherwise requires:

- (a) references to persons includes individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships;

- (b) the headings are inserted for convenience only and do not affect the construction of the Agreement;
- (c) references to one gender includes all genders; and
- (d) any reference to an enactment or statutory provision is a reference to it as it may have been, or may from time to time be amended, modified, consolidated or re-enacted;
- (e) the words “other”, “including” and “in particular” shall not be construed so as to limit the generality of any preceding words;
- (f) defined terms not separately defined in this Agreement shall bear the same meaning as in the Membership Agreement.

1.3 In the case of conflict or ambiguity, the order of precedence for this Agreement and the documents attached to or referred to in this Agreement shall be as follows:

- first, the Membership Agreement;
- then, this Agreement;
- then, the NHS Brand and Policy Guidelines.

## 2 Grant of Licence

2.1 We grant to You a non-exclusive and royalty-free licence during the Term to use the Trademarks solely in relation to the provision of the Appointed Services in the Territory, subject to the terms of this Agreement.

2.2 Nothing in this Agreement shall prevent Us from using the Trademarks or from granting rights in the Trademarks to any other party.

2.3 We reserve the right to:

- (a) make modifications to the Trademarks (the **Modifications**); or
- (b) develop new trademarks, trade names or logos (the **New NHS Brands**); and

We shall notify You of any Modifications and New NHS Brands where We consider them to be relevant to the Appointed Services. Upon the issue of such a notice, the Modifications and New NHS Brands shall be deemed to be Trademarks for the purposes of this Agreement and You shall ensure that Your use of the Modifications and New NHS Brands is in compliance with the terms and conditions of this Agreement.

2.4 You shall, unless We, in Our absolute discretion, notify You otherwise (which may include a requirement for immediate compliance), have two (2) months from the date of notification of a Modification or a New NHS Brand under clause 2.3, in order to ensure that You use and apply all Trademarks subject to such Modification or such New NHS Brand in relation to the Core Uses in place of such Trademarks prior to such Modification or any Trademark which the New NHS Brand is intended to replace (as applicable).

## 3 Conditions of Use

3.1 You shall, at all times during the performance of Your obligations under the Membership Agreement, use and apply the Trademarks in relation to the Core Uses.

3.2 You may, in the course of providing the Appointed Services, use the Trademarks for any Additional Use provided that before engaging in such Additional Use:

- (a) You have provided to the Approval Committee notice of Your desire to use the Trademarks specifying full details of the nature and duration of the requested Additional Use; and
- (b) the Approval Committee has provided its approval in writing of the requested Additional Use.

3.3 You shall, and shall procure that Your agents, representatives and sub-contractors shall:

- (a) ensure that any use of the Trademarks (and any materials bearing representations of the Trademarks) is in compliance with all applicable legislation;
  - (b) ensure that any use of the Trademarks (including any Core Use or Additional Use) conforms to the NHS Brand and Policy Guidelines and any guidance, policies or instructions that We may issue from time to time;
  - (c) not use, register or attempt to register any trademarks, company, business or trading names or domain names which are identical or similar to (or which incorporate) any of the Trademarks, any aspect of them, or any other of Our trademarks or trade names;
  - (d) not do anything which could, in Our reasonable opinion, bring the Trademarks, Us or any part of the NHS into disrepute or which could otherwise damage the goodwill attaching to the Trademarks or Our or any other part of the NHS' reputation;
  - (e) not exploit the Trademarks for any direct or indirect commercial gain (including by permitting use of the Trademarks in return for value), other than any commercial gain derived solely from performing obligations under the Membership Agreement, unless we agree otherwise in writing;
  - (f) not use the Trademarks in a manner which could, in Our reasonable opinion, result in any of them becoming generic or in Our rights in them becoming diluted, or which could otherwise prejudice or invalidate a registration or application for registration of any of the Trademarks;
  - (g) not sub-license the Trademarks without first seeking and receiving the approval of the Approval Committee; and
  - (h) at Your own cost and at Our request, take any steps required for the registration of the licence granted to You under clause 2 in any relevant registries in the Territory and assist Us with the removal or cancellation of any such registration on the termination or expiry of this Agreement;
- 3.4 In the event of an amendment to or reissue of the NHS Brand and Policy Guidelines during the Term or Our issue of any instruction, policy or guidance as contemplated by clause 3.3(b), You shall, unless We, in Our absolute discretion, notify You otherwise (which may include a requirement for immediate compliance), have two (2) months from the date on which such amendment or reissue is first made available, or the date of issue of such instruction, policy or guidance (as applicable), in order to comply with such amendment or the changes included in such reissue or with those elements of the instructions or guidance which differ from the NHS Brand and Policy Guidelines (as the case may be).

#### **4 Approval and Inspection**

- 4.1 You shall retain all such records of each of Your uses of the Trademarks (including copies of all materials on which a representation of any Trademark appears) as shall enable Us to verify Your compliance with the terms of this Agreement and shall deliver up such records to Us promptly on request.
- 4.2 You shall, on reasonable prior notice from Us, permit Us (or Our nominated representative) to enter Your premises or any other premises on which the Trademarks are being used or Appointed Services making use of the Trademarks are being provided to check compliance with the terms of this Agreement. You shall provide Us with such information and documents (including copies of materials on which a representation of any Trademark appears) as We may reasonably request in order to perform a full audit of Your compliance with this Agreement.
- 4.3 We reserve the right, by giving You notice in writing, to require You to send to Us for Our prior approval, all such details of and/or sample materials showing Your proposed uses of the Trademarks as We may require.

- 4.4 If we have exercised Our rights under Clause 4.2, then You shall not engage in any such proposed use of the Trademarks until such time as we have approved such use.
- 4.5 If We believe, on reasonable grounds, that You are failing to comply with any of Your obligations under this Agreement, We may:
- (a) suspend Your rights to use the Trademarks in relation to any Additional Use which has previously been approved in accordance with this Agreement;
  - (b) require You to withdraw or destroy such materials bearing the Trademarks as We believe may not be in compliance with any of Your obligations under this Agreement;
  - (c) require You to remove any display of the Trademarks from Your signage or vehicles;
  - (d) require You to take any other steps (at Your expense) which We determine are necessary to ensure compliance; and/or
  - (e) exercise any of Our rights under the Membership Agreement, to the extent they are applicable.

## **5 Ownership**

- 5.1 You acknowledge and agree that:
- (a) all intellectual property and other rights in the Trademarks are Our exclusive property;
  - (b) You shall not acquire, nor claim, any right, title or interest in or to any of the Trademarks or the goodwill attaching to them by virtue of this Agreement or Your use of the Trademarks, other than the rights specifically granted to You under clause 2;
  - (c) all goodwill arising from Your use of the Trademarks shall accrue and belong to Us, and You shall, at Our request and cost, promptly execute all documents required by Us to give effect to this; and
  - (d) all use of the Trademarks by You shall be deemed to be use by Us.

## **6 Infringement**

- 6.1 You shall immediately notify Us in writing of any of the following matters which come to Your attention (giving full particulars):
- (a) any actual, suspected or threatened infringement or any unauthorised use of the Trademarks;
  - (b) any allegation or complaint made by any third party that any of the Trademarks is invalid, that use of the Trademarks infringes any third party rights, or that use of the Trademarks may cause deception or confusion to the public; and
  - (c) any other form of attack or claim to which any of the Trademarks may be subject.
- 6.2 You shall not make any admissions in respect of these matters other than to Us and shall, in each case, provide Us with all relevant information in Your possession.
- 6.3 We shall decide in Our absolute discretion whether or not to take action, and what action to take, in respect of any of the matters in clause 6.1 and shall have exclusive control over any resulting claims, actions and proceedings. The provisions of section 30 of the Trade Marks Act 1994 are expressly excluded.
- 6.4 You shall provide any assistance which We require (including bringing proceedings or lending Your name to any proceedings brought by the Us) in connection with any of the matters in clause 6.1. Any award of costs or damages or other compensation payment recovered in connection with any of those matters shall be retained by Us.

## **7 Indemnity**

- 7.1 You shall indemnify Us against each loss, liability, damage and cost (including reasonable legal expenses) which We suffer or incur as a result of or in connection with any claim against Us which results from Your breach of Your obligations under this Agreement.

## **8 Duration**

- 8.1 This Agreement commences on the Commencement Date and, subject to earlier termination in accordance with clause 9, terminates automatically without notice on the expiry of the Term.

## **9 Termination**

- 9.1 If You commit a breach of any obligation under this Agreement and, in the case of a breach which is capable of remedy, fail to remedy it within 30 days of receipt of notice from Us of such breach and of Our intention to exercise Our rights under this clause, We may (without prejudice to any other right or remedy):
- (a) instruct You to take such steps as We may reasonably consider necessary or expedient to remedy the Your breach or to mitigate or preclude any damage caused or loss suffered as a result of such breach;
  - (b) take such steps, or engage others to take such steps, as We may reasonably consider necessary or expedient to remedy Your breach or to mitigate or preclude any damage caused or loss suffered as a result of such breach (and You shall promptly reimburse Us for any costs we incur in taking such action); or
  - (c) terminate this Agreement by written notice to You.
- 9.2 This Agreement shall automatically terminate in the event the Membership Agreement expires or is terminated.
- 9.3 For the purposes of clause 9.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance.

## **10 Consequences of Termination**

- 10.1 On expiry or termination of this Agreement for any reason, the licence granted under clause 2 shall immediately cease and You shall immediately:
- (a) cease all use of the Trademarks (including removing any display of the Trademarks from all Marketing Materials, and cancelling any registrations in Your name for any corporate, business, trade or domain names incorporating any of the Trademarks, or any aspect of them, with any relevant registry); and
  - (b) immediately (and at Your own expense) deliver to Us or to any person nominated by Us all products and materials, in electronic or hard copy form, under Your control on or in relation to which any of the Trademarks are being or have been used by You; or, if requested by Us, destroy them and certify in writing to Us that this has been done.
- 10.2 Termination or expiry of this Agreement shall not release either of the parties from any liability which at the time of termination or expiry has already accrued to the other party, nor affect in any way the survival of any other right, duty or obligation of the parties which is expressly stated elsewhere in this Agreement to survive such termination or expiry.

## **11 Assignment and Other Dealings**

- 11.1 You shall not nor shall You purport to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Agreement nor grant, declare, create or dispose of any right or interest in it, or sub-contract the performance of any of its

obligations under this Agreement without Our prior written consent, such consent not to be unreasonably withheld or delayed.

## 12 Notices

12.1 Any notice to be given by one party to the other, or by You to the Approval Committee under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the party giving it. Save for as specified otherwise in this Agreement, it shall be served by sending it by fax to the number set out in clause 12.2, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in clause 12.2 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this clause 12). Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, at the time of transmission;
- (c) in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting,

provided that in each case where delivery by hand or by fax occurs after 6pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day.

References to time in this clause are to local time in the country of the addressee.

12.2 The addresses and fax numbers of the parties for the purpose of clause 12.1 are as follows:

### **Us**

ECN/FCN Contract Manager/ECN/FCN Marketing Manager  
Central Contract Management Unit – Commercial Directorate  
Department of Health  
7<sup>th</sup> Floor, New Kings Beam House  
22 Upper Ground  
London SE1 9BW

Copied to: Department of Health Branding Team  
Address: Department of Health  
Room 231B  
Skipton House  
80 London Road  
London  
SE1 6LH

Fax: 0207 972 5239  
For the attention of: Head of Brand Management

### **You**

Address: **[Insert]**  
Fax: **[Insert]**  
For the attention of: **[Insert]**

A party may notify the other party to this Agreement of a change to its name, relevant addressee, address or fax number for the purposes of this clause 12, provided that such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or

- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

### **13 Miscellaneous**

- 13.1 No failure or delay by either party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.
- 13.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of both parties. Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.
- 13.3 If and to the extent any provision of this Agreement is held to be illegal, void or unenforceable, such provision shall be given no effect and shall be deemed not to be included in the Agreement but without invalidating any of the remaining provisions of this Agreement.
- 13.4 Neither party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement if such failure or delay is due to any cause whatsoever outside its reasonable control, and it shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause.
- 13.5 This Agreement and the Membership Agreement (to the extent relevant) set out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement. It is agreed that:
  - (a) neither party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other party which is not expressly set out or referred to in this Agreement;
  - (b) neither party shall have any remedy in respect of misrepresentation or untrue statement made by the other party which is not contained in this Agreement; and
  - (c) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.
- 13.6 Nothing in this Agreement is deemed to constitute a partnership between the parties nor constitute any party the agent of the other party for any purpose.
- 13.7 This Agreement and the relationship between the parties shall be governed by, and interpreted in accordance with, English law. Each of the parties agrees that the courts of England are to have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Agreement or otherwise arising in connection with this Agreement and for such purposes irrevocably submit to the jurisdiction of the English courts.
- 13.8 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.
- 13.9 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.



## **SCHEDULE 13**

### **COMMISSIONING FOR HIGHER QUALITY AND INNOVATION**

#### **1. GENERAL**

- 1.1. The CQUIN framework has been developed to help produce a system that actively encourages organisations to focus on quality improvement and innovation in commissioning discussions and so to stretch themselves, improve quality for patients and innovate.
- 1.2. The Provider will apply the CQUIN scheme applicable to the Purchasing Authority in whose geographic region the Approved Facility is based. ("CQUIN Scheme").
- 1.3. All Patient Services supplied at an Approved Facility under any Individual Service Contract will be subject to CQUIN Payment Factor calculated in accordance with the locally approved CQUIN Scheme.

#### **2. REPORTING & PAYMENT FRAMEWORK**

- 2.1. Within 30-days of the end of the Financial Year, the Provider and the relevant Purchasing Authority shall meet to agree the applicable scores attributable to each measure in the CQUIN Scheme for that Approved Facility.
- 2.2. Within 10 days of such meeting, the relevant Purchasing Authority shall write to the Provider to confirm the CQUIN Payment Factor for that Approved Facility.
- 2.3. Following allocation of the CQUIN Payment Factor, the Provider may invoice each Purchasing Authority for the CQUIN Payment by multiplying the CQUIN Payment Factor for the Approved Facility and the total Service Charges for each Purchasing Authority at the Approved Facility in that Financial Year.
- 2.4. In the event that Provider's IS ECN Participation is terminated, or an Approved Facility is suspended from the Choose and Book Menu before the completion of the Financial Year, the Provider's CQUIN Payment Factor for each Approved Facility affected shall be calculated and applied pro-rata.

## SCHEDULE 14

### ACTIVITY PLANS AND CAPACITY REVIEW

#### 1. General

- 1.1 The Purchasing Authorities and Provider have a mutual responsibility to respond to the health needs of their populations.
- 1.2 The Provider will use its best efforts to construct a local Activity Plan with the Purchasing Authority located closest to each Approved Facility, to reflect the changing health needs of their populations, changes in the distribution profile of activity and casemix, the capacity requirements of national and local targets and standards, and any innovative treatment. In the event that an Approved Facility has not agreed an Activity Plan by 1 October 2009, the Activity Plan is deemed to be the actual activity at the Approved Facility in the previous 3 months (on a rolling basis), until such time as the Provider agrees an Activity Plan with the relevant Purchasing Authority.

#### 2. Contents and Thresholds

- 2.1 The Activity Plan shall comprise:
  - 2.1.1 each type of activity forecast at specialty level;
  - 2.1.2 activity forecasts at HRG level or equivalent for the largest specialties individually;
  - 2.1.3 activity forecasts for groups of specialties, where specialties are not specified individually;
- 2.2 The Activity Plan may additionally, and without limitation, specify forecast monthly levels of:
  - 2.2.1 GP referrals to outpatients;
  - 2.2.2 consultant-to-consultant referrals;
  - 2.2.3 other referrals to outpatients;
  - 2.2.4 outpatient conversion rates; and
  - 2.2.5 the ratio of subsequent to first outpatient attendancesand any other such levels as may be reasonably required by the relevant Purchasing Authority.
- 2.3 Any agreed Activity Plan should specify a forecast threshold for each activity to function as an early warning of where the actual level of demand exceeds the forecast threshold, with the intent that any breach of the forecast threshold will be reviewed by the Provider and the relevant Purchasing Authority without delay.
- 2.4 The Activity Plan shall set out agreed Capacity Review Criteria.

#### 3. Care and Resource Utilisation

- 3.1 The Provider shall manage demand and associated costs for all the Services in accordance with any agreed Activity Plan, and shall in particular, but without limitation:
  - 3.1.1 manage conversion rates and follow-ups by specialty to the levels set out in the Activity Plan;
  - 3.1.2 comply with the reasonable requests of the relevant Purchasing Authority to understand and manage referrals; and
  - 3.1.3 require its agents, sub-contractors and employees to adhere to any referral and treatment protocols that may be agreed between the Provider and the relevant Purchasing Authority.

#### 4. Capacity Review

- 4.1 Where the Capacity Review Criteria in relation to any individual Activity Plan are satisfied;

and

- 4.1.1 it is not practically feasible for the Provider to take such action as is required for it to increase its capacity so as to meet an increase in demand for the relevant Appointed Service(s); and
- 4.1.2 the Provider acting reasonably considers that it will be unable to meet the 18 Weeks Referral-to-Treatment Target in respect of the relevant Appointed Services

the Provider shall by notice in writing require the relevant Purchasing Authority to participate in a Capacity Review of the activity specified in the notice in order to determine and agree a corrective plan of action ("Capacity Review Action Plan").

- 4.2 The Capacity Review shall consider:
  - 4.2.1 any reasonable constraints on the physical capacity or resources, including Service Staff and non-NHS activity of the Provider; and
  - 4.2.2 whether the Provider is delivering the most efficient care pathways for the Clinical Services the subject of the Capacity Review as informed by Good Clinical Practice.
- 4.3 The relevant Purchasing Authority shall, upon conclusion of the Capacity Review, report its findings and any recommendations to the Provider.
- 4.4 Where the findings of the Capacity Review are that there is a limit on the Clinical Services in excess of the levels set out in the Activity Plan that the Provider can reasonably undertake so as to achieve the 18 Weeks Referral-to-Treatment Target, the Provider and the relevant Purchasing Authority shall agree a Capacity Review Action Plan to enable the Provider to comply with the 18 Weeks Referral-to-Treatment Target in respect of all such activity as soon as is reasonably practicable.
- 4.5 The Provider and the relevant Purchasing Authority shall at all times act reasonably and in good faith in relation to any Capacity Review.
- 4.6 Where a Purchasing Authority finds that the Provider has triggered a Suspension Event, the Provider shall notify the Authority that a Suspension Event has occurred.