



Digital

Connection Agreement

in relation to the Transition Network
and HSCN

THIS AGREEMENT is made on [date].....

BETWEEN:

(1) The Health and Social Care Information Centre (also known as NHS Digital), an executive non-departmental public body, whose head office is located at 1 Trevelyan Square, Boar Lane, Leeds, LS1 6AE ("**HSCN Authority**")

and

(2) [name and address of organisation]

.....

.....

..... ("**the TN Service Recipient**" or, in relation to the obligations set out in Part 2 of this Connection Agreement, "**HSCN Consumer**").

Glossary	
Term	Meaning
ABAS	means the Advanced Behavioural Analysis Suite that screens out known viruses and malware within browsing traffic at the Internet gateway, providing advanced protection against new threats.
CN-SP	means a consumer network service provider, as defined in the HSCN Solution Overview document and the HSCN Operational Design Overview.
CN-SP Deed	means a deed of undertaking made between the HSCN Authority and a CN-SP which governs the obligations owed by the CN-SP to the HSCN Authority and HSCN Consumers.
EMS	means the Enhanced Monitoring Service, a signature based anti-malware scanning and blocking service that screens out known viruses and malware within browsing traffic at the Internet gateway.
HSCN	means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate.
HSCN Authority's Advanced Network Monitoring Service	means the Advanced Network Monitoring Service as described in the HSCN Operational Design Overview.
HSCN Authority Network Analytic Service	means the Network Analytic Service as described in the HSCN Operational Design Overview.
HSCN Compliant	means a status as detailed in the document "HSCN Compliance Operating Model" which can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , and as updated by the HSCN Authority from time to time.
HSCN Connectivity Services	means any service which is offered by a CN-SP to provide access to and / or routing over the HSCN.
HSCN Consumer(s)	means the recipient(s) of HSCN Connectivity Services.
HSCN Consumer Contract	means any agreement pursuant to which a CN-SP (or Material Sub-contractor of a CN-SP) agrees to supply HSCN Connectivity Services to a HSCN Consumer.
HSCN Data Security Centre or Data Security Centre	means the NHS Digital Data Security Centre which ensures that Cyber Threats and Incident Management is undertaken with the correct people, process and technology.

HSCN Supplemental Terms	Mandatory	means the set of supplemental terms which can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers .
HSCN Framework	Obligations	means the documents available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , which sets out the obligations to which CN-SPs must comply.
HSCN Operational Overview	Design	means an overview of the operating model for the HSCN solution (the latest version can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers).
HSCN Solution Overview		means an overview document of the HSCN solution (the latest version can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers).
HSCN Supplier		means any supplier providing any element of the HSCN services.
HSCN Website – Providers of NHS Services		means the providers of NHS services section of the HSCN website that can be accessed at https://digital.nhs.uk/health-social-care-network/providers .
Information Toolkit (IGT)	Governance	means the system for assessing compliance with Department of Health information governance policies and standards available at: https://www.igt.hscic.gov.uk .
NHS Digital Applications	National	means the applications listed under the systems tab at http://systems.hscic.gov.uk/ .
TN Agreement		means the agreement entered into between NHS Digital and British Telecommunications plc in respect of the provision of services to enable the transition of network services from the N3 infrastructure into the HSCN environment.
TN Service Recipients		means the service recipients using network services under the TN Agreement.

1 About this Connection Agreement

- 1.1 This Agreement (referred to as the "**Connection Agreement**") is set out in two parts, Part 1 and Part 2.
- 1.2 Part 1 of this Connection Agreement sets out the obligations of TN Service Recipients in relation to their receipt of services under the TN Agreement.
- 1.3 Part 2 of this Connection Agreement sets out what TN Service Recipients are required to do in relation to connecting with and using the HSCN.
- 1.4 For the avoidance of doubt, the obligations as set out in Part 2 of this Connection Agreement relate to the use of and access to the HSCN, and the parties shall not be bound by such obligations except to the extent that the TN Service Recipient uses and/or has access to the HSCN.
- 1.5 By submitting this Connection Agreement to the HSCN Authority, you are committing your organisation to be bound by the obligations in this Connection Agreement.
- 1.6 The person who signs this Connection Agreement on behalf of a TN Service Recipient **must** be an individual with requisite authority to bind your organisation to the obligations set out in this Connection Agreement.
- 1.7 Any changes to this Connection Agreement shall be subject to the change control procedures as available at the HSCN Website – Providers of NHS Services section and may be updated from time-to-time by the HSCN Authority.

PART 1 - TRANSITION NETWORK CONNECTION OBLIGATIONS

2 TN Service Recipient Obligations

Network Monitoring

- 2.1 The TN Service Recipient agrees that the EMS and ABAS and/or the HSCN Authority's Advanced Network Monitoring Service will monitor and inspect, through signature and behavioural analysis, the content of unencrypted internet-bound traffic to look for evidence of malicious or suspicious content. The TN Service Recipient acknowledges that the operation of this service involves the analysis of the content of internet traffic, including, if not encrypted, Personal and Sensitive Personal Data (as defined in section 3 of Annex A).
- 2.2 For the avoidance of doubt, the HSCN Authority shall have no liability to the TN Service Recipient in respect of the functioning or non-functioning of the EMS, ABAS, HSCN Authority Network Analytic Service and/or the HSCN Authority's Advanced Network Monitoring Service.

Securing information

- 2.3 Each TN Service Recipient acknowledges that:
- 2.3.1 the primary requirement of services delivered under the TN Agreement is to be available as a means for sharing information amongst the health and social care community;
- 2.3.2 services delivered under the TN Agreement do not help secure data in any way as it passes across the network. Responsibility for providing sufficient security lies with the sending and receiving organisation, or the providers and users of sites or applications that are accessed through these services. This includes providing assurances that any service or application available on services delivered under the TN Agreement or organisations or users on the network is authentic and appropriately secured; and
- 2.3.3 services delivered under the TN Agreement do not warrant the authenticity of any service, system or data available through, or any information received through, such services.

Information Governance – NHS Digital National Applications

- 2.4 The TN Service Recipient shall comply with all applicable information governance requirements in order to handle patient data, and access systems, services and resources that are available through the services delivered under the TN Agreement.
- 2.5 For the NHS Digital National Applications, this is currently the Information Governance Toolkit (IGT). For other systems and services, local arrangements may apply.
- 2.6 In submitting this Connection Agreement, you are agreeing to comply with requirements and arrangements for those systems and services which you will access or make use of through the services delivered under the TN Agreement.

- 2.7 The current arrangements for the NHS Digital National Applications are set out at the following location:

<https://www.igt.hscic.gov.uk/>

TN Service Recipients should check with organisations that provide systems and services that they use as to local arrangements that are in place.

- 2.8 The TN Service Recipient shall comply with all relevant policies, guidelines or directions from time to time made available on the Data Security Centre websites, accessible at the following locations (and/or via any replacement sites identified by the HSCN Authority from time to time):

2.8.1 <http://content.digital.nhs.uk/carecert>; and

2.8.2 <http://systems.digital.nhs.uk/infogov>.

3 **Governing Law and Jurisdiction**

This Connection Agreement and any issues, disputes or claims arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales, and the HSCN Authority and the TN Service Recipient agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Connection Agreement.

4 **Counterparts**

- 4.1 This Connection Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 4.2 The parties agree that each party shall be entitled to execute this Connection Agreement by electronic signature.

5 **Further Obligations**

- 5.1 In order to support the other obligations set out in this Connection Agreement,
- 5.1.1 Annex A (Further Legal Obligations) Part A to this Connection Agreement sets out the obligations of the TN Service Recipient in respect of any claims or liabilities arising in respect of access to the HSCN; and
- 5.1.2 Annex A (Further Legal Obligations) Part B to this Connection Agreement sets out the obligations of the TN Service Recipient in respect of the use and protection of data being processed through the HSCN.

The TN Service Recipient acknowledges and agrees that each part of Annex A shall apply, mutatis mutandis, to the TN Service Recipient's use of and/or access to services delivered to it pursuant to the TN Agreement.

PART 2 - HSCN CONNECTION OBLIGATIONS

1 About this Part 2 of the Connection Agreement

The obligations set out in this Part 2 of the Connection Agreement shall only apply to the TN Service Recipient to the extent that the TN Service Recipient uses and/or has access to the HSCN.

Any changes to this Connection Agreement shall be subject to the change control procedures as available at the HSCN Website – Providers of NHS Services section and may be updated from time-to-time by the HSCN Authority

2 Help in completing this Connection Agreement

2.1 There are several sources of information available to help HSCN Consumers understand and meet their security obligations under this Connection Agreement. These include:

2.1.1 **CN-SPs** - these are the organisations that will connect HSCN Consumers to the HSCN, help HSCN Consumers understand how the HSCN service will work and how best to secure the HSCN service to meet HSCN Consumer's obligations under this Connection Agreement;

2.1.2 **Organisations with whom HSCN Consumers already work to provide IT and network systems and services** – for example, an IT department, systems suppliers, or network or IT provider. These organisations will generally understand how to protect against wider cyber-security threats – including malware; and

2.1.3 **HSCN Website – Providers of NHS Services.**

3 Entitlement to connect to and use the HSCN

3.1 Connection to the HSCN is provided based on the business need to share information within the health and social care community.

3.2 However, to protect the availability of the HSCN as a shared resource for the health and social care system, where (in its sole discretion) the HSCN Authority has concerns in respect of the cyber security, information assurance or information governance arrangements of an organisation applying for a HSCN service or if the CN-SP providing that HSCN service has breached any of its obligations pursuant to its CN-SP Deed, it reserves the right to:

3.2.1 **refuse a HSCN service** if such HSCN service is not already in place;

3.2.2 **restrict or modify access under a HSCN service** to the HSCN Authority's systems, services or applications (including National Applications); or

3.2.3 **terminate a HSCN service.**

- 3.3 Despite the HSCN Authority's rights set out above, its preference shall be to work with a HSCN Consumer to identify and rectify root cause security issues to avoid terminating a HSCN service where possible.
- 3.4 However, if evidence emerges of activity or behaviour by a HSCN Consumer in relation to the use of the HSCN that would undermine the availability of the HSCN, damage the reputation of the HSCN, the NHS or Her Majesty's Government, or otherwise pose a security threat to the organisation or other HSCN Consumers or providers of the HSCN, the HSCN Authority may have no choice other than to terminate the HSCN service.

4 Security Considerations for the HSCN

- 4.1 The primary security consideration of the HSCN is to make sure that it is available as a resource to carry information between providers in the health and social care community. There is a secondary requirement to maintain and to improve a good standard of information governance and cyber-security across the health and social care community. This will help to reduce the exposure of the NHS and wider health and social care providers to the kinds of cyber-attack and loss of personal data that has been widely reported in the media in the last few years.
- 4.2 It is important that each HSCN Consumer (where necessary working with or through its IT partners, suppliers, or other HSCN Consumers):
- 4.2.1 works with the HSCN Authority, HSCN Suppliers, and other members of the health and social care community to help each of these requirements be realised and, in the event that a security incident – including cyber-attack or malware outbreak - is detected or suspected, works (collaboratively where necessary) to help contain the problem, minimise the impact, subsequently resolve it and then to help prevent a re-occurrence;
 - 4.2.2 ensures that each and every other organisation which routes traffic through the HSCN Consumer's own HSCN connection:
 - 4.2.2.1 has signed and submitted to the HSCN Authority an HSCN Connection Agreement; or
 - 4.2.2.2 is otherwise made subject to legally binding terms identical to those set out in this Connection Agreement (which the HSCN Authority may require the HSCN Consumer to verify in writing at any time); and
 - 4.2.3 has technical measures in place to prevent organisations that have not signed a Connection Agreement (or are not subject to terms identical to those set out in this Connection Agreement) in accordance with clause 4.2.2 are prevented from routing traffic to the HSCN through that HSCN Connection.

5 HSCN Authority's obligations under this Connection Agreement

- 5.1 The HSCN Authority commits to:
- 5.1.1 work with HSCN Consumers to help improve and maintain good cyber security and good data handling processes. This includes communicating

updates to good cyber security, information governance and other related guidance to its HSCN Consumers; and

- 5.1.2 inform HSCN Consumers in a timely manner of any incident or security matter that the HSCN reasonably believes will have a negative impact on the connection to the HSCN.

6 HSCN Consumer Obligations

- 6.1 Whilst there are no specific assurance or compliance regimes to which HSCN Consumers must adhere in order to obtain a connection to the HSCN, there are a number of obligations on all organisations that use the HSCN. These are designed to help maintain the availability of the HSCN whilst improving the overall cyber security position of HSCN Consumers and continuing to protect personal information about patients and service users.

Incident Reporting

- 6.2 In the event of a security incident which relates to your use of the HSCN or your connection to the HSCN, you agree that you¹ will:
 - 6.2.1 conduct initial diagnosis of the incident to determine which service is the cause (or most likely cause of the incident);
 - 6.2.2 raise the incident with your CN-SP for the affected service;
 - 6.2.3 at the earliest opportunity inform the HSCN Authority through the mechanism for notifying security incidents as set out on the HSCN Website – Providers of NHS Services section and to complete actions assigned by the HSCN Authority or its representatives in an agreed timeframe to support containment and resolution of the incident;
 - 6.2.4 if the HSCN Data Security Centre team contacts you to help resolve an incident or problem, you must respond as you would for one of your own customers or users;
 - 6.2.5 depending on the nature of the incident, provide audit logs holding user activities, exceptions and information security events to assist in investigations; and
 - 6.2.6 where appropriate, notify other HSCN Consumers with whom you share a HSCN service of any incident that has been communicated to you by the HSCN Supplier or the HSCN Authority.
- 6.3 Where an incident occurs relating to the use of the HSCN by another HSCN Consumer or HSCN Supplier or you reasonably suspect an incident has occurred, you agree that you will notify the HSCN Authority at the earliest opportunity using the contact information set out on the HSCN website.

¹ Or a partner working on your behalf, for example, a system supplier, or IT supplier

Cyber and Information Security

- 6.4 All HSCN Consumers have a duty, through the implementation of robust data handling and information security practices:
- 6.4.1 to be 'good citizens' to help ensure that the HSCN remains available for all users; and
 - 6.4.2 a wider duty to protect their information, systems and services from unauthorised disclosure, destruction, theft, unavailability or loss of integrity through cyber and / or other forms of attack. In some cases, this duty is set out in law, in others it is what service users and patients might reasonably expect of organisations that hold, control or process personal or personal sensitive information about them.
- 6.5 You acknowledge that your organisation has been notified of this information and your responsibilities to implement good information security.

Network Monitoring

- 6.6 The HSCN Consumer agrees that the HSCN Authority Network Analytic Service will monitor the connection point between their networks and the HSCN for the purposes of maintaining the availability of the HSCN, systems and / or services that are available through the HSCN, and the connection between the HSCN and the internet. Examples include looking for abnormal amounts of traffic that could indicate a malware or other cyber security attack.
- 6.7 However, the HSCN Authority Network Analytic Service does not look at or store the content of network traffic.
- 6.8 The HSCN Consumer agrees that the HSCN Authority's Advanced Network Monitoring Service will monitor and inspect, through signature and behavioural analysis, the content of unencrypted internet-bound traffic to look for evidence of malicious or suspicious content. The HSCN Consumer acknowledges that the operation of this service involves the analysis of the content of internet traffic, including Personal and Sensitive Personal Data (as defined in section 3 of Annex A).
- 6.9 For the avoidance of doubt, the HSCN Authority shall have no liability to the HSCN Consumer in respect of the functioning or non-functioning of the HSCN Authority Network Analytic Service and/or the HSCN Authority's Advanced Network Monitoring Service.

Securing information

- 6.10 Each HSCN Consumer acknowledges that:
- 6.10.1 the HSCN's primary requirement is to be available as a means for sharing information between the health and social care community;
 - 6.10.2 the HSCN does not help secure data in any way as it passes across the network. Responsibility for providing sufficient security lies with the sending and receiving organisation, or the providers and users of sites or applications that are accessed through the HSCN. This includes

providing assurances that any service or application available on the HSCN or organisations or users on the network is authentic and appropriately secured; and

- 6.10.3 the HSCN does not warrant the authenticity of any service, system or data available through the HSCN or of any information received through the HSCN.

Access Controls

- 6.11 Because there is sometimes a business need to access a variety of content from a range of services, the HSCN network does not impose any restrictions on categories of sites or services that HSCN Consumers can access through the HSCN, except that:
 - 6.11.1 for internet access, a standard set of controls are in place to prevent data from being shared with known malware resources (for example, places on the internet with which malware may try to communicate with). The purpose of this restriction is to limit the impact on the HSCN community should a malware attack take place, and as such the list of blocked sites may change from time to time; and
 - 6.11.2 HSCN Consumers may agree access restrictions on internet access or general network access (for example, blocks on categories of internet sites) with their CN-SP, but that is a solely a matter between the HSCN Consumers and their CN-SP.

HSCN Service Information

- 6.12 Each HSCN Consumer agrees to provide and maintain (through their connection profile information posted at the HSCN Website – Providers of NHS Services section):
 - 6.12.1 information about which CN-SP they use to provide connection to the HSCN and the length expiry date of their agreement with that CN-SP;
 - 6.12.2 whether their connection to the HSCN is shared with any other organisations (whether health and social care or not) and if so the identity of those organisations; and
 - 6.12.3 the following contacts at the HSCN Consumer:
 - 6.12.3.1 the business sponsor of the connection – this contact should be in a senior position in the organisation who is ultimately responsible for the use of the HSCN service (e.g. Chief Information Officer); and
 - 6.12.3.2 security lead² with whom the HSCN Authority can communicate security information. This individual may be the Senior Information Risk Officer (SIRO), Caldicott Guardian, Chief Security Officer or of equivalent standing and responsibility.

² For some HSCN Consumers, this may be a contact at for example, a partner organisation such as an IT systems supplier or shared service provider who handles security matters for the HSCN Consumer.

Information Governance – NHS Digital National Applications

- 6.13 The HSCN Consumer shall comply with all applicable information governance requirements in order to handle patient data, and access systems, services and resources that are available through the HSCN.
- 6.14 For the NHS Digital National Applications, this is currently the Information Governance Toolkit (IGT). For other systems and services, local arrangements may apply.
- 6.15 In submitting this Connection Agreement, you are agreeing to comply with requirements and arrangements for those systems and services which you will access or make use of through the HSCN.
- 6.16 The current arrangements for the NHS Digital National Applications are set out at the following location:

<https://www.igt.hscic.gov.uk/>

HSCN Consumers should check with organisations that provide systems and services that they use as to local arrangements that are in place.

- 6.17 The HSCN Consumer shall comply with all relevant policies, guidelines or directions from time to time made available on the HSCN Data Security Centre websites, accessible at the following locations (and/or via any replacement sites identified by the HSCN Authority from time to time):
 - 6.17.1 <http://content.digital.nhs.uk/carecert>; and
 - 6.17.2 <http://systems.digital.nhs.uk/infogov>.

7 CN-SP Supplier Terms and Conditions

- 7.1 To be a CN-SP, suppliers have agreed to meet the CN-SP Deed and requirements set out in the HSCN Obligations Framework, which give you as a HSCN Consumer a level of protection.
- 7.2 In order to take advantage of that protection, when purchasing and contracting for HSCN Connectivity Services, HSCN Consumers must:
 - 7.2.1 ensure their chosen supplier is HSCN Compliant. A list of HSCN Compliant suppliers can be found on the HSCN website (<https://digital.nhs.uk/health-social-care-network>); and
 - 7.2.2 ensure that where the relevant framework agreement permits, the CN-SP has incorporated the HSCN Mandatory Supplemental Terms into the relevant HSCN Consumer Contract and it takes priority over any other terms.

7.3 Where the relevant framework agreement does not permit the terms to be amended in such a way, the HSCN Mandatory Supplemental Terms shall be deemed to be included in the HSCN Consumer Contract and the CN-SP shall deliver the HSCN Connectivity Services as if they were so incorporated.

8 Governing Law and Jurisdiction

8.1 This Connection Agreement and any issues, disputes or claims arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales, and the HSCN Authority and the HSCN Consumer agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Connection Agreement.

9 Counterparts

9.1 This Connection Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

9.2 The parties agree that each party shall be entitled to sign this Connection Agreement by electronic signature.

10 Further Legal Obligations

10.1 In order to support the other obligations set out in this Connection Agreement, and to set out HSCN Consumers' obligations in relation to key legal issues associated with use of the HSCN, Annex A (Further Legal Obligations) to this Connection Agreement sets out the obligations of HSCN Consumers in respect of:

10.1.1 any claims or liabilities arising from HSCN Consumers' access to the HSCN; and

10.1.2 the use and protection of data being processed through the HSCN.

IN WITNESS of which this Connection Agreement has been duly executed by the Parties.

Signed by an authorised representative on behalf of the TN Service Recipient:

Name:

Position:

Signature:

Signed by an authorised representative on behalf of the HSCN Authority:

Name: *Thomas Denwood*

Position: *SENIOR RESPONSIBLE OWNER, HSCN*

Signature: *T Denwood*

Name: *Ros Swan*

Position: *SENIOR INFORMATION RISK OWNER*

Signature: *[Handwritten Signature]*

Annex A – Further Legal Obligations

- 1 This Annex sets out the obligations of the HSCN Authority and HSCN Consumers in respect of:
 - 1.1 HSCN Consumer's claims and limitations on liability, in Part A; and
 - 1.2 Data protection, in Part B.

Part A

2 **HSCN Consumers' assistance to The HSCN Authority and HSCN Consumers' claims against HSCN Suppliers**

2.1 Definitions:

"Working Day" means a day other than a Saturday, Sunday or a bank or public holiday in England and Wales.

3 **Performance Review**

- 3.1 The HSCN Authority may from time to time recognise performance issues that affect all or part of the HSCN, and it may elect to investigate the root cause and/or seek to resolve issues. The HSCN Consumers here consent to the HSCN Authority investigating any such performance issues and requiring management or other relevant information from its HSCN Supplier in relation to any such investigation and agree to provide all reasonable support to the HSCN Authority when it is conducting any such investigation. It is agreed that the exchange of any such information or documentation will be on a 'common interest privilege' basis. Common interest privilege simply means that sharing documents between the HSCN Consumers and the HSCN Authority does not waive privilege in those documents against any third party.

4 **HSCN Consumer Exercising Third Party Rights Claims**

HSCN Consumers' Claims

- 4.1 HSCN Consumers have certain tortious and contractual additional third party rights to enforce contract provisions in relation to the use of the HSCN, but in order to benefit from those additional third party rights, the HSCN Authority requires each HSCN Consumer to agree to the following process in respect of any claims which may arise against HSCN Suppliers that require the exercise of such third party rights. For the avoidance of doubt this process does not apply to any claims arising under direct contractual rights under the contract between the HSCN Consumer and its HSCN Supplier.

Request Notice

- 4.2 If an HSCN Consumer believes it has a claim which relies on third party rights, it will, before any claim has been issued, provide the HSCN Authority with a notice containing the following information ("**Request Notice**"):

- 4.2.1 the name of the HSCN Consumer which believes it has a potential claim;

- 4.2.2 material particulars of the potential claim with the HSCN Supplier including the reasons why the HSCN Consumer believes it has a claim;
 - 4.2.3 any actions taken by either party in relation to the potential claim including providing copies of any correspondence;
 - 4.2.4 confirmation of the severity of the problem and the degree of urgency required in progressing the claim;
 - 4.2.5 confirmation that there is an expectation that this claim will require the exercise of third party rights; and
 - 4.2.6 an estimate of the current and projected financial impact of the matters that are the subject of the potential claim on the HSCN Consumer.
- 4.3 The Request Notice and any subsequent correspondence relating to the claim shall be sent to the following email address: HSCN.claims@nhs.net

Further Information

- 4.4 On receipt of the Request Notice, the HSCN Authority may within 10 Working Days of receipt of the Request Notice request any further information it requires in order to fully understand the potential claim. HSCN Consumers will provide any further information requested as soon as possible and in any event within 10 Working Days of receipt of any such request.

Restriction on the Exercise of Third Party Rights

- 4.5 The exercise by the HSCN Consumer of any third party rights requires the HSCN Authority's consent. If the HSCN Authority decides, in its sole discretion, that it is not in the best interests of the HSCN generally for the claim to be brought, it can withhold consent, and require the HSCN Consumer not to commence such claim in the courts, and the HSCN Consumer here agrees to accept that decision.

The HSCN Authority's right to elect to control third party claims

- 4.6 The HSCN Authority in relation to such claims that require the exercise of third party rights, shall, at its sole discretion have the right to inform the HSCN Consumer that it will take exclusive control of a claim and will conduct any litigation on behalf of the HSCN Consumer. If the HSCN Authority decides that it will take on exclusive control of a claim, it will provide written notice confirming this decision to the HSCN Consumer as soon as possible.

5 Group Action Claims

- 5.1 The HSCN Authority may in its sole discretion, in relation to any claims that impact more than one HSCN Consumer, offer in writing to have control of the claim and shall set out within such offer the scope of the HSCN Authority's role, and the approach to establishing a fair settlement amount (which may for example be by obtaining a third party expert counsel opinion).
- 5.2 The HSCN Consumer may consent or decline the offer to join the group action. The HSCN Consumer shall endeavour to respond within 5 Working Days in writing.

6 HSCN Declines to Act and HSCN Consumer Pursues Claim

6.1 If:

- 6.1.1 the HSCN Authority decides that it does not want to take control of a third party rights claim under clause 4.6 of this Annex, it will notify the HSCN Consumer of its decision; and/or
- 6.1.2 the HSCN Authority decides not to veto the issuing or continuation of a third party rights claim; and/or
- 6.1.3 the HSCN Authority does not offer to have control of a group claim under clause 5.1 of this Annex,

then the HSCN Consumer shall be entitled to commence and conduct such litigation on its own behalf. The HSCN Consumer shall notify the HSCN Authority when its claim has been settled, discontinued or determined in court. Details of any settlement or recovery shall be provided to the HSCN Authority as soon as possible. However a claim cannot be brought in relation to third party rights under the TN Agreement unless it is controlled by the HSCN Authority.

- 6.2 Before any claim is commenced, the HSCN Consumer, and the HSCN Authority if it has elected to take control of the claim, shall first seek to resolve the relevant claim using the dispute resolution procedure, including the multi-party dispute process, set out in the agreement in place between the HSCN Authority and the relevant HSCN Supplier to which the claim relates, such process to be construed and/or adapted so as to recognise the role of the relevant HSCN Consumer in the relevant dispute and any subsequent claim.

7 Provision of Information

- 7.1 The intention of these provisions is to ensure that both the HSCN Authority and the HSCN Consumer have an ability to ensure that the conduct of any claim is based on a proper assessment of the merits and the risks of such a claim.
- 7.2 If the HSCN Authority elects to take exclusive conduct of a claim on behalf of an HSCN Consumer, the HSCN Consumer shall ensure that the HSCN Authority and/or its legal advisors are provided on reasonable notice with copies of all documents and records reasonably requested by or on behalf of the HSCN Authority and which are within the HSCN Consumer's power or under its control, for the purposes of investigating the matter and enabling the HSCN Authority to conduct any claim, and as an ongoing obligation to provide such support as is requested by the HSCN Authority. The HSCN Consumer acknowledges that in order to progress the claim, the HSCN Authority may need to disclose any information, documents or records provided by the HSCN Consumer pursuant to this paragraph to the Department of Health, counsel or relevant experts (in each case for the purposes of assessing and/or progressing the claim), and the HSCN Consumer hereby consents to such disclosure.
- 7.3 The HSCN Consumer shall be the named claimant in any claim and the HSCN Consumer shall take any action and institute any proceedings and give any information and assistance as the HSCN Authority may reasonably request in order to conduct the claim.

8 Legal Costs

- 8.1 If the HSCN Authority takes conduct of a claim on behalf of the HSCN Consumer, the legal costs of pursuing the claim will be paid by the HSCN Consumer(s) and the HSCN Consumer(s) shall have the exclusive benefit of any judgment or costs orders obtained as a result of the claim. The HSCN Authority will provide an initial costs estimate for the claim on a case by case basis.
- 8.2 The HSCN Authority may exercise a right to require the HSCN Consumers to place monies on account in order to enable the HSCN Authority to incur the legal costs necessary to progress the claim.
- 8.3 If the HSCN Consumer(s) does not place monies on account as required, then the HSCN Authority shall not be required to continue to conduct the litigation and can in those circumstances at any stage exercise its veto not to progress and if necessary to discontinue the claim and/or the HSCN Consumer shall be excluded from any group action claim.

9 Settlement

- 9.1 In respect of any claim which the HSCN Authority has decided to take conduct of, the HSCN Authority will seek to agree in advance the scope of its involvement and any decision to issue and progress the claim with the HSCN Consumer(s) and will also seek to agree any settlement proposal and the boundaries of any acceptance of any settlement offer. If a decision cannot be agreed, the HSCN Authority shall have the exclusive right to decide how the case is progressed and any decisions relating to the settlement of the claim.
- 9.2 Where the claim brought by a HSCN Consumer forms part of a group of claims by a number of HSCN Consumers, which are being controlled by the HSCN Authority, if a settlement is reached which covers that group of claims but which fails to cover the entirety of the loss suffered by each HSCN Consumer, the HSCN Authority reserves the right to apportion the distribution of the recovered monies in a reasonable manner between the relevant HSCN Consumers.

Part B

9.3 Data Protection and Processing

9.4 Within this clause:

- 9.4.1 **"Data Protection Laws"** shall mean applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as amended from time to time, including the Data Protection Act 1998 (as may be superseded by the General Data Protection Regulation) and the Privacy and Electronic Communications Regulations 2003, together with decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;
- 9.4.2 **"General Data Protection Regulation"** or **"GDPR"** shall mean Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, together with the

codes of practice, codes of conduct, regulatory guidance and standard clauses and other related legislation resulting from the GDPR, as updated from time to time;

9.4.3 **"NIS Directive"** shall mean Directive 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union;

9.4.4 **"Controller", "Processor", "Data Subject", "Personal Data Breach" and "Processing"** shall have the same meanings as in the Data Protection Laws and **"Processed" and "Process"** shall be construed in accordance with the definition of "Processing". **"Personal Data" and "Sensitive Personal Data"** shall have the same meaning as in the Data Protection Laws, and shall refer to Personal Data (or Sensitive Personal Data) provided by the HSCN Consumer to the HSCN Authority in connection with this Connection Agreement, or as otherwise Processed by the HSCN Authority in relation to the services offered to the HSCN Consumer in connection with HSCN.

9.4.5 **"Data Subject Access Request"** means a request, in accordance with the Data Protection Laws, by a Data Subject or an authorised third party acting on behalf of the Data Subject, to access a copy of the Data Subject's Personal Data, together with certain other information about how that Personal Data is Processed.

9.4.6 **"Restricted Country"** means:

9.4.6.1 any country outside the European Economic Area, and

9.4.6.2 any country not deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC.

9.5 The Parties acknowledge that connection to and use of the HSCN by the HSCN Consumer will involve the Processing of Personal Data.

9.6 The Parties further acknowledge that the HSCN Consumer shall be the Controller in respect of all information which it places onto, or transmits across, the HSCN. In providing the HSCN, the HSCN Authority is acting as a Processor on behalf of the HSCN Consumer, for which role it shall be permitted to use a number of third party sub-contractors, also acting as Processors (**"sub-processors"**). By way of example, such third party sub-contractors shall include (but may not be limited to) the ANM service provider.

9.7 Notwithstanding the provisions of clause 9.6, the Parties further acknowledge that the HSCN Authority will Process the following categories of data relating to its provision of HSCN, and to the extent that the data contains any personal data, shall Process the following as a Controller:

9.7.1 traffic data (including IP address) required to transmit messages over HSCN;

9.7.2 Customer relationship management data (including contact details of individuals and IP addresses allocated to the HSCN Consumer) required

to resolve queries and to communicate with the HSCN Consumer about its use of HSCN; and

9.7.3 other data required to administer this Connection Agreement and to comply with our obligations under this Connection Agreement (including in relation to governance).

9.8 The HSCN Authority and the HSCN Consumer shall at all times comply with their respective obligations under the Data Protection Laws, and shall not do, nor omit to do, anything which would place the other party in breach of its obligations thereunder.

9.9 In relation to any Personal Data placed onto, or transmitted across HSCN by the HSCN Consumer and Processed by the HSCN Authority (or by any sub-processor acting on its behalf) as a Processor, the HSCN Authority shall, and shall procure that its agents, sub-processors and employees shall:

9.9.1 not Process, transfer, modify, amend or alter the Personal Data or disclose or permit the disclosure of the Personal Data to any third party other than:

9.9.1.1 in accordance with the HSCN Consumer's instructions (which includes instructions as set out in this Connection Agreement); or

9.9.1.2 where required by applicable law to which the HSCN Authority is subject, in which case the HSCN Authority shall inform the HSCN Consumer of that legal requirement before Processing that Personal Data, unless that law prohibits such information being provided on important grounds of public interest;

9.9.2 take reasonable steps to ensure the reliability of any employee, agent or sub-contractor who may have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the services in the context of that individual's duties to the HSCN Authority, ensuring that all such individuals:

9.9.2.1 are informed of the confidential nature of the Personal Data; and

9.9.2.2 are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;

9.9.3 until 25 May 2018, notify the HSCN Consumer promptly, and without undue delay, upon becoming aware of a Personal Data Breach;

9.9.4 from and including 25 May 2018, except where statutory guidance indicates that a Personal Data Breach is not required to be notified by a Processor to a Controller, notify the HSCN Consumer promptly and without undue delay upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the HSCN Consumer with sufficient information and in a timescale which allows the HSCN Consumer to meet any obligations to

report a Personal Data Breach under the Data Protection Legislation. Such notification shall as a minimum:

- 9.9.4.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
 - 9.9.4.2 communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
 - 9.9.4.3 describe the likely consequences of the Personal Data Breach; and
 - 9.9.4.4 describe the measures taken or proposed to be taken to address the Personal Data Breach;
- 9.9.5 co-operate with the HSCN Consumer and take such reasonable commercial steps as are directed by the HSCN Consumer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- 9.9.6 notify the HSCN Consumer within 5 Working Days if it receives:
- 9.9.6.1 from a Data Subject (or third party acting on behalf of a Data Subject):
 - (a) a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) a request to rectify any inaccurate Personal Data;
 - (c) a request to have any Personal Data erased;
 - (d) a request to restrict the Processing of any Personal Data;
 - (e) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any Third Party;
 - (f) an objection to any Processing of Personal Data; or
 - (g) any other request, complaint or communication relating to the HSCN Consumer's obligations under the Data Protection Legislation;

and co-operate as requested by the HSCN Consumer to enable the HSCN Consumer to comply with any exercise of rights by a Data Subject under the Data Protection Laws in respect of Personal Data Processed by the HSCN Authority under this Connection Agreement or comply with any assessment, enquiry, notice or investigation under the Data Protection Laws, including by implementing such technical and organisational measures as may be reasonably required by the HSCN Consumer to allow the HSCN Consumer to respond effectively to relevant complaints, communications or requests;

- 9.9.7 not transfer, or permit the transfer, of any Personal Data to any Restricted Country;
 - 9.9.8 cease Processing the Personal Data immediately upon the termination or expiry of the Connection Agreement and as soon as reasonably practicable thereafter, at the HSCN Consumer's option (to be exercised without undue delay), either return (where technically possible), or securely wipe from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains;
 - 9.9.9 promptly notify the HSCN Consumer if any complaint, allegation or request is made (including by any regulator) relating to the HSCN Authority's Processing of Personal Data pursuant to this Agreement. The HSCN Authority shall provide reasonable cooperation and assistance to the HSCN Consumer as reasonably required in relation to any such complaint, allegation or request including by promptly providing full details of any such complaint, allegation or request; and
 - 9.9.10 allow the HSCN Consumer or its representative, at its own cost and on written notice, to inspect any premises where the Processing of the Personal Data takes place and (subject to any duties of confidentiality owed by the HSCN Authority) to inspect, audit and copy any relevant records, processes and systems in order that the HSCN Consumer may satisfy itself that the provisions of this clause are being complied with. The HSCN Authority shall provide reasonable cooperation and assistance to the HSCN Consumer in respect of any such audit and shall at the request of the HSCN Consumer, provide the HSCN Consumer with evidence of compliance with its obligations under this Connection Agreement.
- 9.10 The HSCN Consumer authorises the HSCN Authority to appoint any third party sub-contractor to Process the Personal Data ("**sub-processor**"), in each case provided that:
- 9.10.1 the contract between the HSCN Authority and the sub-processor includes terms which are substantially the same as those set out in this clause;
 - 9.10.2 the HSCN Authority remains fully liable to the TN Service Recipient for any failure by a sub-processor to fulfil its obligations in relation to the Processing of any Personal Data; and
 - 9.10.3 the use of any sub-processor is otherwise in accordance with clause 9.9.7.
- 9.11 From and including 25 May 2018, subject to the HSCN Consumer providing the HSCN Authority with all information reasonably required by the HSCN Authority to comply with this clause 9.11, create and maintain a register setting out:
- 9.11.1 the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and

- 9.11.2 a general description of the technical and organisational security measures adopted by the HSCN Authority to protect the Personal Data in accordance with paragraph 9.12,

in each case to the extent that such information is known to the HSCN Authority.

- 9.12 Both the HSCN Authority and the HSCN Consumer shall implement and ensure that its agents, sub-contractors (including sub-processors) and employees implement appropriate technical and organisational measures to ensure a level of security commensurate with the risks associated with the Processing, such measures to be appropriate in particular to protect against accidental or unlawful destruction, loss, alteration or unauthorised disclosure of or access to the Personal Data. Notwithstanding the foregoing, the HSCN Consumer shall be solely responsible for the security (including confidentiality and integrity through encryption or otherwise) of any Personal Data which it places onto HSCN. The HSCN Consumer shall ensure that, prior to providing any Personal Data to the HSCN Authority, or otherwise placing any Personal Data on to HSCN, it has:

- 9.12.1 provided all relevant Data Subjects with a fair processing notice which:

9.12.1.1 sets out the purposes for which the Personal Data will be Processed by the HSCN Authority, or by any third party acting under a contract with HSCN Authority;

9.12.1.2 identifies that Personal Data will be Processed by the HSCN Authority on behalf of the HSCN Consumer;

9.12.1.3 identifies that certain other Personal Data may be shared with the HSCN Authority in its capacity as a separate Controller; and

9.12.1.4 otherwise contains all information required by the Data Protection Laws;

- 9.12.2 obtained all necessary consents or authorisations from Data Subjects to permit the Processing of Personal Data by the HSCN Authority anticipated by this Connection Agreement; and

- 9.12.3 otherwise taken all steps to ensure that the Personal Data may lawfully be disclosed to, and Processed by, the HSCN Authority or by third parties acting under a contract with the HSCN Authority.

- 9.13 From and including 25 May 2018, both the HSCN Authority and the HSCN Consumer shall comply with their respective obligations under the General Data Protection Regulation in relation to this Connection Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR. In readiness for compliance with the GDPR, the HSCN Authority shall provide a report to the HSCN Consumer prior to the entry into force of the GDPR setting out the steps which the HSCN Authority requires the HSCN Consumer to take to ensure that its use of the services delivered under the HSCN TN Agreement is compliant with the GDPR. The compliance report produced by the HSCN Authority pursuant to this clause will be a general report prepared for the benefit of all HSCN Consumers.
- 9.14 The HSCN Consumer shall take any steps required by the compliance report produced by the HSCN Authority pursuant to clause 9.12.
- 9.15 Both the HSCN Authority and the HSCN Consumer shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Directive. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Directive, the HSCN Authority may elect to produce a report setting out the steps to be followed by both parties in relation to their proper use of HSCN.
- 9.16 If following the date of this Connection Agreement:
- 9.16.1 any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the General Data Protection Regulation or from the NIS Directive are published, or
- 9.16.2 the UK ceases to be a Member State of the European Union,
- then the HSCN Authority may prepare an amended version of this Connection Agreement for signature by the HSCN Consumer, or may require the HSCN Consumer to take such further actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.