

THIS DEED OF UNDERTAKING is made on [REDACTED]

BETWEEN:

- (1) The Health and Social Care Information Centre known as NHS Digital ("the HSCN Authority"); and
(2) [REDACTED] ("the HSCN Supplier"),
together, "the Parties".

Background:

- A. The Secretary of State requires the provision of a national network for use by health and social care public sector bodies in England (and with the potential to extend to Scotland, Wales, Northern Ireland, and the Channel Islands).
- B. The HSCN Authority has enabled health public sector users that require access to HSCN to purchase HSCN services from certain suppliers ("Consumer Network Service Providers" or CN-SPs). CN-SPs require access to the HSCN core network in order to provide their services.
- C. The HSCN Supplier wishes to sell its services as a CN-SP and is required to sign this Deed as part of Stage 1 of its HSCN Compliance application.
- D. The purpose of this Deed is to monitor CN-SP service provision to enable the Authority to remedy / address non-compliance with (1) the obligations owed to it under this Deed and (2) rights of, or obligations owed to, HSCN Consumers as HSCN Obligations where those HSCN Obligations should have been included in the HSCN Consumer Contract but have not been, in each case in order to ensure that the HSCN Connectivity Services are provided to an appropriate quality. This Deed does not replace the contractual relationship between a CN-SP and the HSCN Consumer or any contractual relationship between CN-SPs required to deliver HSCN Connectivity Services to a HSCN Consumer.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Deed the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2. In this Deed, unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.
- 1.3. The Contractor shall remain responsible for all acts and omissions of its Material Sub-contractors as if they were its own. An obligation on the HSCN Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the HSCN Supplier to procure that its employees, staff, agents and Material Sub-contractors also do, or refrain from doing, such act or thing.
- 1.4. The fact that any provision within this Deed is expressed as a warranty shall not preclude the right of termination that the HSCN Authority may have in respect of any breach of that provision by the HSCN Supplier.
- 1.5. In the execution of its rights and responsibilities under the Deed the HSCN Authority shall act at all times in a fair, reasonable, impartial and non-discriminatory manner.
2. **COMPLIANCE WITH THE HSCN OBLIGATIONS**
- 2.1. The HSCN Supplier shall, and procure that each of its Material Sub-contractors shall, comply with its HSCN Obligations and the standard of service level performance described in, and measured in accordance with, Schedule 2. Any breach of any HSCN Obligation, or the standard of service level performance described in Schedule 2, by the HSCN Supplier or any of its Material Sub-contractors will be deemed a breach of this Deed by the HSCN Supplier.
- 2.2. The HSCN Supplier shall promptly inform the HSCN Authority of any breach of this Deed (as described in clause 2.1) upon becoming aware of such breach.
- 2.3. Upon becoming aware of any breach of this Deed (as described in clause 2.1) by the HSCN Supplier, the HSCN Authority shall be entitled but not obliged to prepare a draft Risk Assessment which shall include:
- 2.3.1. details of the nature of the breach and any previous breaches by the HSCN Supplier and associated Risk Assessments (if any) and the resultant actions taken on each;
- 2.3.2. an assessment of the details in clause 2.3.1, which will include:
- 2.3.2.1. risk description(s);
- 2.3.2.2. impact description(s);
- 2.3.2.3. potential mitigations(s);
- 2.3.2.4. anticipated residual risk description; and
- 2.3.2.5. proposed next steps.
- 2.4. The draft Risk Assessment prepared in accordance with clause 2.3 above shall be subject to the review of the HSCN Service Owner (or their deputy) and updated accordingly to produce the final Risk Assessment.
- 2.5. Following the production of the final Risk Assessment in accordance with clause 2.4 above, the HSCN Authority shall issue a formal notification of the breach to the HSCN Supplier, which shall include the conclusions of the HSCN Authority's final Risk Assessment and a description of the next steps to be undertaken, which shall be one or more of the following:
- 2.5.1. notification to the HSCN Supplier setting out corrective action required from the HSCN Supplier, in which case the provisions of clause 2.8 shall apply;
- 2.5.2. notification to the HSCN Supplier that a Remediation Plan is required to a specified level of detail and in specified timescales, both of which will be determined by the HSCN Authority acting reasonably and based on the scale and nature of the risk as detailed in the HSCN Authority's final Risk Assessment, in which case the provisions of clause 2.9 shall apply;
- 2.5.3. notification to the HSCN Supplier that HSCN Sales are suspended, in which case the provisions of clauses 2.7 and 2.10 shall apply; and/or
- 2.5.4. notification to the HSCN Supplier that their HSCN Compliance is to be terminated, in which case the provisions of clauses 2.7 and 2.11 shall apply.
- 2.6. If the HSCN Authority elects not to produce a Risk Assessment in accordance with clause 2.3, the HSCN Authority may issue a formal notification of breach upon becoming aware of such breach. This notification shall include a description of the next steps as described in clauses 2.5.1 to 2.5.4 above.
- 2.7. Unless there are exceptional circumstances, the HSCN Authority shall not issue the notifications described in clauses 2.5.3 or 2.5.4 above without prior:
- 2.7.1. discussion of the position with the HSCN Supplier;
- 2.7.2. formal notification to the HSCN Supplier that the issue will be escalated to the Senior Responsible Officer for the HSCN Programme or their representative;
- 2.7.3. opportunity for the HSCN Supplier to meet with the Senior Responsible Officer for the HSCN

Programme or their representative to discuss and attempt to resolve the issue; and

- 2.7.4. final approval of the notification by the Senior Responsible Officer for the HSCN Programme or their representative,
- and will, under normal circumstances, only do so following the execution of the Remediation Plan process. However, should the HSCN Authority, acting reasonably, determine that remediation is unlikely to be successful or the risk posed to the HSCN services is too significant, the HSCN Authority may, at its sole discretion invoke the next steps outlined at clauses 2.5.3 and/or 2.5.4.
- 2.8. Where the notification is of the requirement for corrective action from the HSCN Supplier pursuant to clause 2.5.1 above:
- 2.8.1. the notification shall set out such corrective action required from the HSCN Supplier;
- 2.8.2. the HSCN Supplier shall perform such corrective action in a timely manner and to the HSCN Authority's satisfaction;
- 2.8.3. where the HSCN Supplier is unable to reasonably satisfy to the HSCN Authority that it has performed such corrective action, the HSCN Authority reserves its right to exercise its discretion to require the HSCN Supplier to produce a Remediation Plan pursuant to clause 2.5.2 or to suspend the HSCN Supplier's HSCN Sales or terminate the HSCN Supplier's HSCN Compliance status in accordance with clauses 2.5.3 and/or 2.5.4.
- 2.9. Where the notification is of the production of a Remediation Plan pursuant to clause 2.5.2 above:
- 2.9.1. the HSCN Supplier shall produce the Remediation Plan within ten Working Days, or other duration agreed between the HSCN Supplier and the HSCN Authority acting reasonably, and shall collaborate with the HSCN Authority to agree the content of the same;
- 2.9.2. the HSCN Supplier shall execute the agreed Remediation Plan and shall keep the HSCN Authority informed of progress in accordance with the reporting frequency and methods in the agreed Remediation Plan; and
- 2.9.3. where the HSCN Supplier and the HSCN Authority, both acting reasonably, are unable to reach agreement on the Remediation Plan in the timescales set out in clause 2.9.1, the HSCN Authority reserves its right to exercise its discretion to suspend the HSCN Supplier's HSCN Sales or terminate the HSCN Supplier's HSCN Compliance status in accordance with clauses 2.5.3 and/or 2.5.4.
- 2.10. Where the notification is of the suspension of HSCN Sales pursuant to clause 2.5.3 above:
- 2.10.1. the HSCN Authority shall publish the fact that the HSCN Supplier is suspended from the provision of new HSCN Connectivity Services;
- 2.10.2. the HSCN Supplier shall not enter into any new contracts for the provision of HSCN Connectivity Services unless agreed otherwise by the HSCN Authority in writing;
- 2.10.3. the HSCN Supplier shall liaise with the HSCN Authority to agree next steps to either address the issues that resulted in the HSCN Sales suspension or to progress to termination of its HSCN Compliance status;
- 2.10.4. the HSCN Supplier shall liaise with the HSCN Authority to execute the next steps agreed;
- 2.10.5. the HSCN Authority shall, acting reasonably and at its sole discretion, remove the suspension should it determine that the risk to the provision of HSCN Connectivity Services has been mitigated to an acceptable level; and
- 2.10.6. during this suspension process, should the HSCN Supplier indicate that it no longer wishes to be HSCN Compliant or the HSCN Authority determines at its sole discretion and at all times acting

reasonably and in an impartial, non-discriminatory and fair manner that the HSCN Supplier should no longer be HSCN Compliant, the HSCN Supplier and the HSCN Authority shall agree a plan for terminating the HSCN Compliance status and managing the closure and/or transfer of any existing HSCN Connectivity Services supplied by the HSCN Supplier. Bearing in mind that termination of any contracts between a HSCN Consumer and a HSCN Supplier will be subject to the termination rights included within that contract, the HSCN Consumer shall have the final say regarding enacting any termination of their contract with a HSCN Supplier.

- 2.11. Where the notification is of the termination of the HSCN Supplier's HSCN Compliance pursuant to clause 2.5.4 above:
- 2.11.1. such notice shall expressly state the effective date on which termination shall occur;
- 2.11.2. the HSCN Supplier will immediately be suspended from the provision of new HSCN Connectivity Services unless otherwise agreed by the HSCN Authority in writing;
- 2.11.3. the HSCN Supplier and the HSCN Authority shall agree a plan for terminating the HSCN Supplier's HSCN Compliance status and managing the closure and/or transfer of existing HSCN Connectivity Services supplied by the HSCN Supplier. If in the HSCN Authority's reasonable opinion, the HSCN Supplier is not acting constructively or co-operatively in managing the closure and/or transfer of existing HSCN Connectivity Services supplied by the HSCN Supplier, the HSCN Authority reserves its right to take any reasonable action required, and the HSCN Supplier shall comply with the HSCN Authority's reasonable directions, to progress the same;
- 2.11.4. the HSCN Authority shall publish details of the termination and closure and/or transfer in a manner consistent with the agreed plan; and
- 2.11.5. the HSCN Supplier shall operate in accordance with this Deed whilst it provides any HSCN Connectivity Services.

3. REASONABLE ASSISTANCE

- 3.1. The HSCN Supplier shall at all times provide the HSCN Authority with such assistance as the HSCN Authority may reasonably require, and allocate reasonable resources to meet its obligations as set out in this Deed.

4. COOPERATION

- 4.1. The HSCN Supplier shall be responsible for creating any revisions to arrangements with other CN-SPs for establishing connections between services to ensure that all operational and technical interfaces between those parties which are required to provide the HSCN Connectivity Services are delivered in accordance with Good Industry Practice. Any such revised arrangements will be subject to the Change Control Process as described in clause 10.

5. COMPLIANCE VERIFICATION

- 5.1. The HSCN Supplier shall throughout the Term achieve and maintain HSCN Compliance for the HSCN Connectivity Services.
- 5.2. The HSCN Authority may require the HSCN Supplier to provide on reasonable notice a Security Risk Assessment and plan describing the additional levels of assurance and / or security controls that it will implement as a result of its contracted or forecasted share of the HSCN market, geographical or health sector share, to the reasonable satisfaction of the HSCN Authority. The HSCN Authority will provide the HSCN Supplier with a clear scope requirement for the Security Risk Assessment. The Security Risk Assessment and resulting plan, security controls and assurance shall take into account the risk to the availability of the HSCN, including impact levels of all assets providing the HSCN Supplier's HSCN service and be based on an agreed risk assessment methodology.
- 5.3. In the event that the HSCN Supplier refuses or fails to promptly provide an adequate Security Risk Assessment

pursuant to clause 5.2 above, the HSCN Authority shall be entitled to suspend the HSCN Supplier's HSCN Sales in accordance with the procedure described in paragraph 2.10 until such time as the HSCN Supplier provides a Security Risk Assessment, plan, security controls and assurance to the reasonable satisfaction of the HSCN Authority.

6. WARRANTIES

- 6.1. The HSCN Supplier warrants and undertakes to comply with the HSCN Obligations.
- 6.2. The HSCN Authority shall be entitled to save, copy and publish all Management Information (provided pursuant to the HSCN Obligations or provided under the operation of this Deed).
- 6.3. The HSCN Authority shall not be liable to the HSCN Supplier for any claims, proceedings, actions, damages, costs, expenses nor any other liabilities of any kind which may arise out of, or in consequence of the withdrawal of any other HSCN Supplier's HSCN Compliance status or termination of their respective HSCN Deed.
- 6.4. The HSCN Supplier shall be obliged to 'fix first and find fault later'. This means that if, at any time, the HSCN Supplier becomes aware that there is (or is likely to be) an interruption or degradation in the provision of any HSCN Connectivity Services for whatever reason, whether the issue is caused by the HSCN Supplier, or any third party, the HSCN Supplier shall use all reasonable endeavours to eliminate or mitigate (to the extent it is able) the consequences of the delay and impact on the HSCN services.
- 6.5. Except as expressly stated in this Deed, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

7. DISPUTES

- 7.1. If a dispute arises out of or in connection with this Deed or the performance, validity or enforceability of it ("**Dispute**") then, without prejudice to their other rights, the HSCN Supplier and the HSCN Authority shall follow the procedure set out in this Clause 7:
 - 7.1.1. either the HSCN Supplier or the HSCN Authority shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Contract Manager (or equivalent representative) of the HSCN Authority and the Contract Manager (or equivalent representative) of the HSCN Supplier shall attempt in good faith to resolve the Dispute. The Dispute Notice may specify that the Party issuing the Dispute Notice has determined (in the case of the HSCN Authority) or considers (in the case of the HSCN Supplier) that the Dispute is a Multi-Party Dispute in which case such Dispute Notice:
 - 7.1.1.1. if it is served by the HSCN Authority, shall be treated as a Multi-Party Procedure Initiation Notice; and
 - 7.1.1.2. if it is served by the HSCN Supplier, shall be treated as a Supplier Request, in each case the Multi-Party Dispute Resolution Procedure described in Schedule 3 shall apply instead of Clauses 7.1.2 and 7.1.3.
 - 7.1.2. if the Contract Manager (or equivalent representative) of the HSCN Authority and the Contract Manager (or equivalent representative) of the HSCN Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Programme Director (or equivalent representative) of the HSCN Authority and the Programme Director (or equivalent representative) of the HSCN Supplier who shall attempt in good faith to resolve it; and
 - 7.1.3. if the Programme Director (or equivalent representative) of the HSCN Authority and the Programme Director (or equivalent representative) of the HSCN Supplier are for any reason unable to resolve the Dispute within 30 days of it being

referred to them, then either the HSCN Supplier or the HSCN Authority may propose to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate the mediation, the HSCN Supplier or the HSCN Authority must serve notice in writing ("**Mediation Notice**") to the other party to the Dispute, requesting a mediation. The Party receiving the Mediation Notice may decide that mediation is appropriate in which case it shall promptly notify the other Party and this paragraph 7.1.3 shall apply. At this stage a copy of the Mediation Notice and a copy of the response from the party receiving the Mediation Notice should be sent to CEDR by the party that served the Mediation Notice. If the Party receiving the Mediation Notice does not wish to mediate it shall promptly notify the other Party of its decision and the Parties may proceed to court proceedings. Unless otherwise agreed between the HSCN Supplier and the HSCN Authority within 20 days of service of the Mediation Notice, the mediator shall be nominated by CEDR. Unless otherwise agreed between the HSCN Supplier and the HSCN Authority, the mediation will start not later than 30 days after the date of the Mediation Notice.

- 7.1.4. If any Dispute cannot be resolved by the HSCN Supplier and the HSCN Authority in accordance with Clauses 7.1.1 and / or 7.1.2 or the Multi-Party Dispute Resolution Procedure and the HSCN Supplier and the HSCN Authority fail to settle the Dispute under a mediation pursuant to Clause 7.1.3 or do not agree to mediation pursuant to Clause 7.1.3 within 30 days after the expiry of the period for resolution of the Dispute by the Programme Director (or equivalent representative) of the HSCN Authority and the Programme Director (or equivalent representative) of the HSCN Supplier, either party may submit the Dispute to the English courts in accordance with Clause 16 of this Deed.

- 7.2. In the event of any Dispute between the HSCN Supplier and the HSCN Authority in relation to the provisions of this Deed, the HSCN Supplier and the HSCN Authority shall continue to comply with their respective obligations under this Deed and / or other HSCN Deed and the HSCN Supplier shall continue to provide their HSCN Connectivity Services until the Dispute has been resolved.

8. LIMITATION OF LIABILITY

- 8.1. Neither the HSCN Supplier nor the HSCN Authority limits its liability for:
 - 8.1.1. death or personal injury caused by its negligence, or that of its employees, agents or Material Sub-contractors (as applicable); or
 - 8.1.2. fraud or fraudulent misrepresentation by it or its employees; or
 - 8.1.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 8.2. Subject to clause 8.1, neither the HSCN Supplier nor the HSCN Authority will be liable to the other for:
 - 8.2.1. any indirect, special, economic or consequential loss or damage; or
 - 8.2.2. any loss of profits, turnover, contracts, or business opportunities, expenditure of time by managers and employees, business, goodwill, business interruption, anticipated savings, wasted expenditure, data or destruction of data.
- 8.3. Subject to clauses 8.1 and 8.2, the HSCN Supplier's liability per event or series of connected events shall be limited to £1,000,000 (subject to indexation).
- 8.4. Subject to clauses 8.1, 8.2, 8.7 and 8.8, the HSCN Supplier's aggregate liability in each Contract Year shall be limited to £2,000,000 (subject to indexation).
- 8.5. Subject to clauses 8.1 and 8.2, the HSCN Authority's liability per event or series of connected events shall be limited to £1,000,000 (subject to indexation).

- 8.6. Subject to clauses 8.1, 8.2, 8.7 and 8.8, the HSCN Authority's aggregate liability in each Contract Year shall be limited to £2,000,000 (subject to indexation).
- 8.7. The parties acknowledge and agree that in the Initial Contract Period, the liability caps described in clauses 8.4 and 8.6 shall be a referable portion calculated by reference to the number of days in the Initial Contract Period.
- 8.8. The parties acknowledge and agree that in the final Contract Year, the liability caps described in clauses 8.4 and 8.6 shall be a referable portion calculated by reference to the number of days in the final Contract Year.
- 8.9. Nothing in this clause 8 shall act to reduce or affect the HSCN Supplier or the HSCN Authority's general duty to mitigate its loss.
- 8.10. Nothing in this clause 8 shall affect the HSCN Supplier's liability under the direct contracts with its HSCN Consumers for the provision of HSCN Connectivity Services.
- 8.11. For the avoidance of doubt, this clause 8 relates to liability resulting from a breach of obligations under this Deed only (by the HSCN Authority or the CN-SP) and is not intended to be a means to give any party double or multiple recovery in relation to the same loss.
- 8.12. For the avoidance of doubt, the HSCN Authority shall not be liable to the HSCN Supplier in respect of the acts or omissions of any Other Supplier.
- 8.13. Any amounts or sums in this Deed which are expressed to be "subject to indexation" shall be adjusted in accordance with the provisions of this clause 8.13. Where indexation applies, the relevant adjustment shall be:
- 8.13.1. applied on the first day of the first April following the Effective Date and on the first day of April in each subsequent year (each such date an "**Adjustment Date**"); and
- 8.13.2. determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 9. AUDIT**
- 9.1. The HSCN Authority shall, where it determines acting reasonably that an audit is necessary, have the right to audit aspects of the HSCN Connectivity Services provided by the HSCN Supplier in order to gather evidence related to any suspected or known breach of this Deed by the HSCN Supplier.
- 9.2. The HSCN Authority may appoint third party organisation(s) to undertake audits on its behalf. Any third party organisation acting on this basis will be an independent and impartial organisation and will be subject to an appropriate confidentiality agreement. The HSCN Authority shall endeavour to (but is not obliged to) provide at least ten Working Days prior written notice of its intention to conduct an audit and the identity of its intended auditor.
- 9.3. Where the HSCN Authority conducts an audit or appoints an auditor pursuant to clauses 9.1 and 9.2, it shall use all reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the HSCN Supplier's business and operations or delay the provision of the HSCN Connectivity Services.
- 9.4. The HSCN Supplier shall, where required by the HSCN Authority, provide the HSCN Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in line with the HSCN Supplier's procedures and controls in relation to each audit, including but not limited to:
- 9.4.1. provision of information, data and records relating to the HSCN Connectivity Services required by the HSCN Authority, provided that the HSCN Supplier shall not be obliged to provide information which relates to the HSCN Supplier's input costs, capital and operating costs, overheads, revenue, margins and profits;
- 9.4.2. reasonable access to any sites controlled by the HSCN Supplier, and to any equipment used (whether exclusively or non-exclusively) in the performance of the HSCN Connectivity Services, and only to the extent that the HSCN Supplier is able to grant such access;
- 9.4.3. reasonable access to the HSCN Supplier's IT systems used (whether exclusively or non-exclusively) in the performance of the HSCN Connectivity Services. The HSCN Authority shall ensure it complies with the HSCN Supplier's Information Assurance accreditation requirements and evidence this for the operation of this clause; and
- 9.4.4. reasonable access to HSCN Supplier's personnel including facilitating access through virtual conferences and meetings and travel as appropriate.
- 9.5. The HSCN Supplier and the HSCN Authority agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 9 and the HSCN Authority will give due regard to the HSCN Supplier's costs when executing the audit within the constraints of achieving the objectives of the audit.
- 10. CHANGE CONTROL**
- 10.1. Changes to the Deed and / or HSCN Obligations shall be subject to the Change Control Process agreed for the overall governance of the provision of HSCN Connectivity Services.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1. The HSCN Supplier hereby assigns to the HSCN Authority, by way of present and future assignment, any and all of its right title and interest in and to the HSCN Materials absolutely, with full title guarantee.
- 11.2. To the extent that the HSCN Supplier sub-contracts performance of any of its obligations pursuant to this Deed, it shall use its best endeavours to ensure that any HSCN Materials arising from the work of its Material Sub-contractor shall be assigned to it absolutely, whereupon all the HSCN Supplier's right, title and interest in and to the same shall, for the avoidance of doubt, be transferred to the HSCN Authority pursuant to clause 11.1.
- 11.3. The Supplier Background IPR is and shall remain the exclusive property of the HSCN Supplier but the HSCN Supplier hereby grants to the HSCN Authority a non-exclusive, royalty free, perpetual and irrevocable, freely transferrable licence to use the Supplier Background IPR as necessary in order to receive the full benefit of the HSCN Supplier's obligations under this Deed and/or to freely exploit the HSCN Materials, including the right to grant sub-licences.
- 11.4. Except as expressly set out in this Deed, the HSCN Supplier shall not acquire any right, title or interest in or to the Licensed Materials.
- 11.5. The HSCN Authority hereby grants to the HSCN Supplier a non-exclusive, non-assignable, non-transferable licence (including the right to grant sub-licences to Material Sub-contractors) during the Term provided the HSCN Supplier continues to hold HSCN Compliance status to:
- 11.5.1. use the Licensed Materials and HSCN Materials solely to the extent necessary for performing the HSCN Connectivity Services in accordance with this Deed; and
- 11.5.2. use the HSCN Assurance Mark to indicate that the HSCN Supplier holds HSCN Compliance status for the provision of the HSCN Connectivity Services.
- 11.6. The HSCN Supplier shall not, and shall procure that the Material Sub-contractors do not, use the Licensed Materials and HSCN Materials or the HSCN Assurance Mark for any purpose not expressly permitted by the licences in clause 11.5.
- 11.7. All use of the HSCN Assurance Mark by the HSCN Supplier and Material Sub-contractors shall strictly comply with the HSCN Authority's written specifications, standards and directions for use of that mark as may be communicated by the HSCN Authority from time to time.
- 11.8. The HSCN Supplier shall not do or fail to do, and shall procure that no Material Sub-contractors do or fail to do, any act or thing whereby the validity, enforceability or the HSCN Authority's ownership of the HSCN Assurance Mark, or the reputation or goodwill associated with the HSCN Assurance Mark, is likely to be prejudiced.

- 11.9. The HSCN Supplier and Material Sub-contractors shall not have any of the rights described in section 30 of the Trade Marks Act 1994 or in any equivalent legislation from time to time in force in any jurisdiction.
- 11.10. The HSCN Supplier and any Material Sub-contractors shall promptly inform the HSCN Authority of any suspected unauthorised use of the HSCN Assurance Mark (or any confusingly similar mark) of which they become aware, and shall provide the HSCN Authority with such documents, information and assistance as they can in relation to any such use.
- 11.11. Any goodwill derived from the use by the HSCN Supplier or any Material Sub-contractors of the HSCN Assurance Mark shall accrue to the HSCN Authority absolutely, and the HSCN Supplier hereby assigns to the HSCN Authority, by way of present and future assignment, any and all of its right title and interest in and to that goodwill absolutely, with full title guarantee. The HSCN Supplier shall procure that the Material Sub-contractors assign all of their right title and interest in and to that goodwill to the HSCN Authority absolutely, with full title guarantee. The HSCN Authority may, at any time, call for a document confirming the assignment of that goodwill and the HSCN Supplier shall, and shall procure that any Material Sub-contractors shall, immediately execute it.
- 11.12. At its own expense, the HSCN Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this clause 11.
- 11.13. All licences granted to the HSCN Supplier (and any sub-licences granted by the HSCN Supplier in respect of the same) under this Deed, including to use the Licensed Materials, HSCN Materials and the HSCN Assurance Mark, shall terminate automatically, and the HSCN Supplier and any Material Sub-contractors shall immediately cease all use of the rights and materials so licensed, upon termination or expiry of this Deed or upon the HSCN Supplier ceasing to hold HSCN Compliance status for any reason.

12. FREEDOM OF INFORMATION

- 12.1. The HSCN Supplier acknowledges that the HSCN Authority is subject to the requirements of the FOIA and the EIRs. The HSCN Supplier shall:
- 12.1.1. provide all necessary assistance and co-operation as reasonably requested by the HSCN Authority to enable the HSCN Authority to comply with its obligations under the FOIA and EIRs;
- 12.1.2. transfer to the HSCN Authority all Requests For Information relating to this Deed (where the Request For Information was intended for the HSCN Authority) that it receives as soon as practicable and in any event within two Working Days of receipt;
- 12.1.3. provide the HSCN Authority with a copy of all Information belonging to the HSCN Authority requested in the Request For Information which is in its possession or control in the form that the HSCN Authority requires within five Working Days (or such other period as the HSCN Authority may reasonably specify) of the HSCN Authority's request for such Information; and
- 12.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the HSCN Authority.
- 12.2. The HSCN Supplier acknowledges that the HSCN Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the HSCN Supplier. The HSCN Authority shall take reasonable steps to notify the HSCN Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Deed) the HSCN Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 12.3. The HSCN Authority acknowledges that if the HSCN Supplier is a public authority, it may be required to disclose Information

under the FOIA or EIRs. In such circumstances it shall first take reasonable steps to notify the HSCN Authority of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) and consult with the HSCN Authority and take its views into account to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Deed) the HSCN Supplier shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

13. CONFIDENTIALITY

- 13.1. Subject to clauses 6.2 and 12 (Freedom of Information), and except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Deed, the HSCN Supplier and the HSCN Authority shall treat the other's Confidential Information as confidential and safeguard it accordingly.
- 13.2. Clause 13.1 shall not apply to the extent that:
- 13.2.1. such disclosure is required by Law, provided that clause 12 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- 13.2.2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 13.2.3. such information was obtained from a third party without obligation of confidentiality;
- 13.2.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Deed; or
- 13.2.5. such information was independently developed without access to the other party's Confidential Information.
- 13.3. The parties acknowledge and agree that the exceptions described in clauses 13.2 and 13.5 shall take precedence over any protective markings or statements that may be made on or in respect of any Confidential Information.
- 13.4. The HSCN Supplier and any Material Sub-contractor shall not, and shall procure that the HSCN Supplier's personnel do not, use any of the HSCN Authority's Confidential Information received otherwise than for the purposes of this Deed and shall only share such information on terms mirroring this Deed to entities who have also signed a HSCN Deed.
- 13.5. Nothing in this Deed shall prevent the HSCN Authority from disclosing the HSCN Supplier's Confidential Information (1) to any Crown Body or any other Contracting HSCN Authority. All Crown Bodies or Contracting Authorities receiving such HSCN Supplier's Confidential Information shall be entitled to further disclose the HSCN Supplier's Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting HSCN Authority; (2) to any consultant, contractor or other person engaged by the HSCN Authority (excluding other CN-SPs, and subject to written obligations of confidentiality), or any person conducting a gateway review who has need to know the HSCN Supplier's Confidential Information; (3) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the HSCN Authority has used its resources; or (4) to an entity as is required, pursuant to the expiry and/or planned exit of the HSCN Connectivity Services.

14. TERM

- 14.1. This Deed will begin on the Effective Date and will continue until:
- 14.1.1. the HSCN Supplier ceases to provide HSCN Connectivity Services; and
- 14.1.2. the HSCN Supplier ceases to retain HSCN Compliance (including as a consequence of clause 2.11),
- unless terminated earlier by operation of Law or by mutual agreement in writing.

15. GENERAL

- 15.1. Unless as otherwise stipulated, the HSCN Authority and the HSCN Supplier shall each be solely responsible for the payment of all costs and expenses that each incurs in relation to its own compliance with this Deed.
- 15.2. The HSCN Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Deed without the prior written consent of the HSCN Authority (such consent not to be unreasonably withheld or delayed), save that the HSCN Supplier may transfer its rights or obligations (or both) to any of its subsidiaries, affiliates or other associated organisations without consent provided that the intended transferee already holds HSCN Compliance status and that it notifies the HSCN Authority that it has done so.
- 15.3. The HSCN Authority may assign, novate or otherwise dispose of this Deed (and any associated third party licences) to the Secretary of State for Health, the NHS Commissioning Board known as NHS England, any Central Government body, or to any other body which performs any of the functions in respect of the Health and Social Care Network that previously had been performed by the HSCN Authority. The HSCN Authority shall notify the HSCN Supplier in advance of an assignment, novation or disposal of this Deed.
- 15.4. If the assignment, novation or disposal referred to in clause 15.3 is to take place with a non-crown body the HSCN Authority will notify and hold a discussion with the HSCN Supplier
- 15.5. A change in the legal status of the HSCN Authority shall not affect the validity of this Deed, and this Deed shall be binding on any successor body to the HSCN Authority.
- 15.6. The rights and remedies provided by this Deed may be waived only in writing in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 15.7. Unless a right or remedy of the HSCN Authority is expressed to be an exclusive right or remedy, the exercise of it by the HSCN Authority is without prejudice to the HSCN Authority's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either the HSCN Supplier or the HSCN Authority shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 15.8. The rights and remedies provided by this Deed are cumulative and are not exclusive of any right or remedies provided at law or in equity or otherwise under this Deed.
- 15.9. Nothing in this Deed is intended to create a partnership, or legal relationship of any kind that would impose liability upon either the HSCN Supplier or the HSCN Authority for the act or failure to act of the other, or to authorise either to act as agent for the other. Neither the HSCN Supplier nor the HSCN Authority shall have HSCN Authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other.
- 15.10. If any provision (or part) of this Deed is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision (or part) shall be severed without effect to the remaining provisions (or part). If a provision (or part) of this Deed that is fundamental to the accomplishment of the purpose of this Deed is held to any extent to be invalid, the HSCN Supplier and the HSCN Authority shall immediately commence good faith negotiations to remedy that invalidity.
- 15.11. Both parties undertake to do all acts and execute all documents which may be necessary to give effect to the meaning of this Deed.
- 15.12. The HSCN Supplier may claim relief under this clause 15.12 from liability for failure to meet its obligations under this Deed for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 15.13. The Secretary of State for Health may enforce any term of this Deed relating to the HSCN Supplier's obligations in its own name as a third party beneficiary pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 15.14. Subject to clause 15.13 no third party beneficiary may enforce, or take any step to enforce, any third party provision without the prior written consent of the HSCN Authority, which may, if given, be given on and subject to such terms as the HSCN Authority may determine.
- 15.15. Any amendments or modifications to this Deed may be made, and any rights created under clause 15.13 may be altered or extinguished, without the consent of any third party beneficiary.

16. GOVERNING LAW AND JURISDICTION

This Deed and any non-contractual matters relating to it shall be governed by and construed in accordance with English law and the HSCN Supplier and the HSCN Authority agree to submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1: DEFINITIONS

SCHEDULE 2: PERFORMANCE OF SERVICE LEVELS

SCHEDULE 3: MULTI-PARTY DISPUTE RESOLUTION PROCEDURE

SCHEDULE 4: THE HSCN ASSURANCE MARK

Executed as a deed on behalf of the HSCN Supplier:

Name:.....

Title:.....

Signature:.....

Date:.....

Witnessed by:

Name:.....

Title:.....

Signature:.....

Date:.....

Executed as a deed by affixing the Common Seal of NHS Digital in the presence of:

Name:.....

Title:.....

Signature:.....

Date:.....

Name:.....

Title:.....

Signature:.....

Date:.....

[COMMON SEAL OF NHS DIGITAL TO BE AFFIXED HERE]

Schedule 1 : Definitions

The following terms have the following meanings in this Deed:

CEDR	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
Change Control Process	means the change process described in the document "HSCN Change Control Process", as available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers .
Confidential Information	means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either of the HSCN Supplier or the HSCN Authority (" Discloser ") to the other or to any person on behalf of that other (" Recipient ") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. The HSCN Supplier's " Confidential Information " shall include information of a commercial, financial or sensitive nature that is disclosed by the HSCN Supplier or on behalf of the HSCN Supplier to the HSCN Authority or to any person on the HSCN Authority's behalf as part of the HSCN Supplier's involvement in the provision of the HSCN Connectivity Services and/or its obligations under this Deed. The HSCN Authority's " Confidential Information " shall include the information set out within any documents issued by the HSCN Authority or on the HSCN Authority's behalf and marked 'confidential' (including any data referred or attached thereto);
Consumer Price Index	means the Consumer Price Index recognised as the official measure of inflation of consumer prices of the United Kingdom and also known as the Harmonised Index of Consumer Prices (HICP);
Contract Year	means a period of 12 months commencing on the 1 April 2017 and each anniversary thereafter, provided that the final Contract Year shall end on the date of termination of this Deed.
Contracting Authority	means any contracting authority as defined in the Public Contracts Regulations 2015, other than the HSCN Authority;
Dispute	means any dispute, difference or question of interpretation arising out of or in connection with the provision of the HSCN Connectivity Services between the HSCN Supplier and the HSCN Authority;
Effective Date	means as set out on page 1 on this Deed;
EIRs	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
Force Majeure Event	any event outside the reasonable control of the HSCN Supplier affecting its performance of its obligations under this Deed arising from acts, events, omissions, happenings or non happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by the HSCN Supplier, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster;
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
HSCN CN-SP Service Management Requirement Addendum	means the latest version of the "HSCN CN-SP Service Management Requirement Addendum" as available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers ;
HSCN Compliance or HSCN Compliant	means a status as detailed in the document "HSCN Compliance Operating Model", as at the Effective Date as set out at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers , and as updated by the HSCN Authority from time to time throughout the Term and notified to the HSCN Supplier;
HSCN Connectivity Services	means any service which is offered by the HSCN Supplier to provide access to the HSCN network;
HSCN Consumer	means a recipient of HSCN Connectivity Services;

HSCN Consumer Contract	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 Deed	means any deed made on the same or similar terms as this Deed executed by any CN-SP wishing to sell its services as a CN-SP;
HSCN Estate Data	means a description of the HSCN services on order and in live operation at the start of the calendar month in which the information is provided and which is in the format set out in the HSCN CN-SP Service Management Requirement Addendum.
HSCN Assurance Mark	means the trade mark short particulars of which are set out in Schedule 4;
HSCN Materials	means any: <ul style="list-style-type: none"> a) Intellectual Property Rights that arise or are obtained or developed in the course of or in connection with performance of the HSCN Supplier's obligations; and/or b) Intellectual Property Rights in any documents or deliverables which are jointly prepared by the HSCN Supplier and the HSCN Authority, <p>which shall include (without limitation) Solution Overview Document, Operational Design Overview and the HSCN Obligations Framework and associated addendums and any replacements or elaborations of the same and any other documents or deliverables which relate to the design, delivery or operation of the network or other service components described in the Solution Overview Document and/or the Operational Design Overview, but shall not include the Supplier Background IPRs;</p>
HSCN Obligations	means the obligations as available at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers which may be updated from time-to-time by the HSCN Authority in reference to clause 10 of this Deed;
HSCN Performance Report	means the HSCN performance report as set out in the HSCN CN-SP Service Management Requirement Addendum;
HSCN Sales	means the entering into of any new agreement to provide HSCN Connectivity Services to a HSCN Consumer;
HSCN Service Owner	means the service management lead for the HSCN programme;
Information	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine readable medium (including CD ROM, magnetic and digital form);
Initial Contract Period	means the period from the Effective Date until 31 March 2017;
Intellectual Property Rights	means: <ul style="list-style-type: none"> (a) copyright rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs and any and all other intellectual property rights, in each case whether registered or unregistered; (b) applications for registration, and the right to apply for registration, for any of the rights listed in (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;
Law	any law, statute, bye-law, regulation, order, regulatory policy or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation, and notice of any Regulatory Body;
Licensed Material(s)	means the Intellectual Property Rights of the HSCN Authority (except the HSCN Assurance Mark), including but not limited to such rights subsisting in the HSCN Authority's documentation, processes and procedures, standards and know-how;
Management Information	means the information required to be provided by the HSCN Supplier to the HSCN Authority pursuant to this Deed or the HSCN Obligations;
Material Sub-contractor	means a sub-contractor (including any affiliate or group company) of the HSCN Supplier in relation to the HSCN Connectivity Services which, in the reasonable opinion of the HSCN Authority, performs (or would perform if appointed) a substantive role in the provision of all or any part of the HSCN Connectivity Services;
Multi-Party Dispute	means a Dispute which involves the Parties and one or more Related Third Parties;
Operational Design Overview	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 ;

Other Supplier	means any supplier to the HSCN Authority (other than the HSCN Supplier) which is notified to the HSCN Supplier from time to time and/or of which the HSCN Supplier should have been aware;
Performance Improvement Review	means a review of performance with the objective of minimising the future occurrence of service level (where those service levels are as defined in the HSCN CN-SP Service Management Requirement Addendum) failures;
Regulatory Body and Regulatory Bodies	means those government departments and any regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Deed or any other affairs of the HSCN Supplier, including but not limited to the National Audit Office, Ofcom, the Competition and Markets Authority, the Information Commissioner's Office and the European Commission;
Related Third Party	means a party to another contract with the HSCN Authority or the HSCN Supplier which is relevant to this Deed;
Remediation Plan	means a plan to address the impact of, and prevent the reoccurrence of, a breach of this Deed;
Request For Information	means a request for Information under the FOIA or the EIRs;
Risk Assessment	means the risk assessment to be developed, reviewed and approved in accordance with clauses 2.3, 2.4 and 2.5;
Security Risk Assessment	means an assessment made using an industry recognised security risk methodology of the likelihood and impact of the unavailability of HSCN Connectivity Services or of other compromise of the HSCN Connectivity Services resulting in data loss. The assessment shall take into account current security controls in place, the number of sales, the geographical proximity of such sales, and the percentage of sales within a single care setting (e.g. GP Practice, Acute Trust, Local Authority);
Service Co-ordinator	means the supplier of the HSCN co-ordination services which are as defined in the Operational Design Overview;
Solution Overview Document	means an overview of the HSCN solution (the latest version can be accessed at https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers);
Supplier Background IPR	means any Intellectual Property Rights created or owned by the HSCN Supplier prior to the date of this Deed or otherwise created independently of the HSCN Supplier's obligations, including but not limited to the HSCN Supplier's standard development tools and know-how;
Supplier Request	means a notice served by the HSCN Supplier requesting that a Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi Dispute Resolution Procedure in respect of that Dispute;
Working Day	means any day other than a Saturday, Sunday or a bank or public holiday in England and Wales.

Schedule 2 : Performance of Service Levels

1. Where in a single calendar month the HSCN Supplier:
 - a. has failed to provide a complete and accurate HSCN Performance Report or a complete and accurate HSCN Estate Data,
OR
 - b. has 10 or more HSCN Connectivity Services in live operation; and
 - c. fails to achieve one or more of the service levels defined within the HSCN Performance Report for more than 10% of their HSCN Connectivity Services.
OR
 - d. has more than 1 and less than 10 HSCN Connectivity Services in live operation; and
 - e. fails to achieve one or more of the service levels defined with the HSCN Performance Report for more than 50% of their HSCN Connectivity Services,
OR
 - f. any non-service management related triggers (e.g. security breaches),
THEN
the HSCN Supplier shall attend a Performance Improvement Review with the Service Co-ordinator, and arranged by the Service Co-ordinator, with the objective of agreeing an action plan for minimising the re-occurrence of such failure(s).

2. Where in a single calendar month the HSCN Supplier:
 - a. has 10 or more HSCN Consumer Contracts in live operation; and
 - b. fails to achieve one or more of the service levels defined within the HSCN Performance Report for more than 10% of their HSCN Consumer Contracts
OR
 - a. has more than 1 and less than 10 HSCN Consumer Contracts in live operation; and
 - b. fails to achieve one or more of the service levels defined within the HSCN Performance Report for more than 50% of their HSCN Consumer Contracts
OR
 - a. any non-service management related triggers (e.g. security breaches)
THEN
the HSCN Supplier shall attend a Performance Improvement Review with the Service Co-ordinator, and arranged by the Service Co-ordinator, with the objective of agreeing an action plan for minimising the re-occurrence of such failure(s).

Schedule 3: Multi-Party Dispute Resolution Procedure

- 1.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Schedule 3 (the "**Multi-Party Dispute Resolution Procedure**").
- 1.2 If at any time following the issue of a Dispute Notice, the HSCN Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the HSCN Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the HSCN Supplier which sets out the HSCN Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 1.3 If following the issue of a Dispute Notice, but before court proceedings have been issued in accordance with Clause 7.1.4, the HSCN Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the HSCN Supplier may serve a Supplier Request on the HSCN Authority.
- 1.4 The HSCN Authority shall (acting reasonably) consider each Supplier Request and shall determine within five Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the HSCN Authority shall serve a Multi-Party Procedure Initiation Notice on the HSCN Supplier; or
 - (b) not a Multi-Party Dispute, in which case the HSCN Authority shall serve written notice of such determination upon the HSCN Supplier and the Dispute shall be treated in accordance with Clauses 7.1.2 to 7.1.3.
- 1.5 If the HSCN Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the HSCN Supplier may not serve another Supplier Request with reference to the same Dispute.
- 1.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the HSCN Authority;
 - (b) the HSCN Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the HSCN Authority considers necessary,
- (together "**Multi-Party Dispute Representatives**").
- 1.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the HSCN Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 1.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Clause 7.1.3 shall apply. Where the Party receiving the Mediation Notice decides that mediation is appropriate it shall promptly notify the other Party and the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, the

mediation and in each case references to the "HSCN Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

- 1.9 If a Multi-Party Dispute cannot be resolved in accordance with this Multi-Party Dispute Resolution Procedure then Clause 7.1.4 shall apply.

Schedule 4: The HSCN Assurance Mark

Territory	Mark	Number	Filing Date	Class	Specification
United Kingdom	 <p>(series of 4)</p>	3199404	29/11/2016	38	Telecommunications services; communications services; telecommunication and computer network services; electronic network communications; providing access to telecommunication and computer networks; information and data transmission via telecommunication and computer networks; routing and connecting services for telecommunications; computer communication and Internet access; access to content, websites and portals; information, advice and consultancy relating to the aforesaid.