

# **HSCN Obligations Framework – Commercial Addendum**

Version 3.0

# Document management

## Revision History

Version	Date	Summary of Changes
V0.1	31/08/2018	First draft
V0.2	07/09/2018	Updated from review comments
V0.3	14/09/2018	Updated following further DLAP review
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V1.0	06/02/2019	Final review and tidy-up for issue into change control.
V1.1	10/07/2019	Includes CNSP feedback and minor tidy-up
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V3.0	12/11/2021	Reviewed as part of 2021 Obligations Review. No changes made.

## Reviewers

This document must be reviewed by the following people:

Reviewer name	Title / Responsibility	Date	Version
John Matthews	Commercial Lead	12/11/21	3.0
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HSCN PCAG	HSCN Procurement and Commercial Assurance Group	24/09/18	0.3
Andrew Wilson	Commercial Delivery Director	24/09/18	1.0

## Approved by

This document must be approved by the following people:

Name	Signature	Title	Date	Version
PCAG	Tim Arnold (Chair)	HSCN Commercial Lead	05/10/18	0.4

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# 1 Glossary

1.1 In this Commercial Addendum, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this paragraph 1 (Glossary). If a capitalised expression does not have an interpretation in this paragraph 1 (Glossary), it shall have the meaning given to it in the HSCN Obligations Framework or HSCN Mandatory Supplemental Terms.

Term	Definition
<b>"Core Network"</b>	means the provision of the shared central core network capability forming part of the overall HSCN Connectivity Services delivered to a HSCN Consumer, which is not specific or exclusive to any individual Service Instance and excludes any configuration information specifically associated with a Service Instance;
<b>"Core Network Assets"</b>	means the assets used in the provision of the Core Network;
<b>"Financial Distress Event"</b>	means the occurrence of one or more of the events set out in paragraph 3.2.1;
<b>"Financial Distress Service Continuity Plan"</b>	means a plan setting out how the HSCN Supplier (together with the Guarantor and/or Material Sub-contractors, where appropriate) will ensure the continued performance and delivery of the HSCN Connectivity Services in accordance with the HSCN Consumer Contract in the event that any of the Financially Monitored Organisations suffer a Financial Distress Event,
<b>"Financially Monitored Organisations"</b>	means: <ul style="list-style-type: none"> <li>a) the HSCN Supplier and where a Guarantor is in place for the HSCN Supplier, the Guarantor for the HSCN Supplier; and</li> <li>b) each Material Sub-contractor and where a Guarantor is in place for a Material Sub-contractor, the Guarantor for that Material Sub-contractor;</li> </ul>
<b>"Service Instance"</b>	means an itemised HSCN Connectivity Service as specified in the Order Form of a HSCN Consumer Contract;

## 2 Document Overview

### 2.1 Purpose of Document

2.1.1 This document details certain commercial / contractual obligations that Consumer Network Service Providers (CNSPs) must adhere to and related HSCN Consumer and HSCN Authority rights.

### 2.2 Related Documents

2.2.1 This document should be read in conjunction with the following:

2.2.1.1 CN-SP Deed; and

2.2.1.2 HSCN Mandatory Supplemental Terms.

2.2.2 These documents can be found in the ‘HSCN Compliance Documents’ section of the HSCN Website: <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>

## 3 Financial standing requirements

### 3.1 Financial standing and duty to notify

3.1.1 The HSCN Supplier shall:

3.1.1.1 regularly monitor the financial health of the Financially Monitored Organisations; and

3.1.1.2 promptly notify (or shall procure that its auditors promptly notify) the HSCN Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 5 Working Days of the date on which the HSCN Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

### 3.2 Consequences of a financial distress event

3.2.1 In the event of:

3.2.1.1 the HSCN Supplier being notified of the Dun and Bradstreet Failure Score of:

(a) the HSCN Supplier or, where a Guarantor is in place for the HSCN Supplier, the Guarantor for the HSCN Supplier; or

(b) any Material Sub-contractor or where a Guarantor is in place for a Material Sub-contractor, the Guarantor for that Material Sub-contractor;

dropping below 45;

3.2.1.2 one or more of the Financially Monitored Organisations issuing a profits warning to a stock exchange or making any other public announcement,

- in each case about a material deterioration in its financial position or prospects;
- 3.2.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of one or more of the Financially Monitored Organisations;
- 3.2.1.4 one or more of the Financially Monitored Organisations committing a material breach of covenant to its lenders;
- 3.2.1.5 a Material Sub-contractor notifying the HSCN Authority or the HSCN Consumer that the HSCN Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.2.1.6 any of the following which the HSCN Supplier reasonably believes could directly impact on the continued performance and delivery of the HSCN Connectivity Services:
- (a) commencement of any litigation against one or more of the Financially Monitored Organisations with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
  - (b) non-payment by one or more of the Financially Monitored Organisations of any financial indebtedness;
  - (c) any financial indebtedness of one or more of the Financially Monitored Organisations becoming due as a result of an event of default; or
  - (d) the cancellation or suspension of any financial indebtedness in respect of one or more of the Financially Monitored Organisations,

then, immediately upon notification of the Financial Distress Event pursuant to clause 3.1.1.2 (or if the HSCN Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the HSCN Supplier), the HSCN Supplier shall have the obligations and the HSCN Authority shall have the rights and remedies as set out in paragraphs 3.2.2 to 3.2.5.

- 3.2.2 The HSCN Supplier shall (and shall procure that any relevant Guarantor and/or any relevant Material Sub-contractor shall):
- 3.2.2.1 at the request of the HSCN Authority, meet the HSCN Authority as soon as reasonably practicable (and in any event within three Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the HSCN Authority may permit and notify to the HSCN Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the HSCN Connectivity Services; and
- 3.2.2.2 where the HSCN Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.2.2.1) that

the Financial Distress Event could impact on the continued performance and delivery of the HSCN Connectivity Services:

- (a) submit to the HSCN Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the HSCN Authority may permit and notify to the Supplier in writing); and
- (b) provide such financial information relating to the Financially Monitored Organisations to whom the Financial Distress Event relates as the HSCN Authority may reasonably require.

3.2.3 The HSCN Authority shall not withhold or delay its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the HSCN Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the HSCN Supplier of its reasons and the HSCN Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the HSCN Authority within five Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the HSCN Authority.

3.2.4 If the HSCN Authority reasonably considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the HSCN Supplier's obligations to HSCN Consumers, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the CN-SP Deed dispute resolution procedure.

3.2.5 Following approval of the Financial Distress Service Continuity Plan by the HSCN Authority, the HSCN Supplier shall:

3.2.5.1 on a regular basis (which shall not be less than monthly) and in consultation with the HSCN Authority, review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of the HSCN Supplier's obligations to HSCN Consumers;

3.2.5.2 where the HSCN Authority considers that the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.2.5.1, submit an updated Financial Distress Service Continuity Plan to the HSCN Authority for its approval, and the provisions of paragraphs 3.2.3 and 3.2.4 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

3.2.5.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.2.6 Where the HSCN Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.2.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the HSCN Authority and the parties

may agree that the HSCN Supplier shall be relieved of its obligations under paragraph 3.2.5.

3.2.7 The following events shall be deemed to be a breach by the HSCN Supplier of the CN-SP Deed:

- 3.2.7.1 the HSCN Supplier failing to notify the HSCN Authority of a Financial Distress Event in accordance with paragraph 3.1.1.2;
- 3.2.7.2 the parties failing to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.2.2 to 3.2.4; and/or
- 3.2.7.3 the HSCN Supplier failing to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.2.5.3.

3.2.8 Where either of the events set out in paragraphs 3.2.7.2 or 3.2.7.3 occur, the HSCN Authority shall be entitled to invoke the suspension of HSCN Connectivity Services sales or to terminate the HSCN Supplier's HSCN Compliance under the CN-SP Deed.

## 4 HSCN Consumer Contract novation

4.1.1 Each CNSP shall procure that it shall include as part of the HSCN Mandatory Supplemental Terms of each HSCN Consumer Contract that it enters into the following provisions:

1. *Where the [HSCN Consumer] has a right to terminate for material default, financial standing deterioration or insolvency under [this HSCN Consumer Contract], the [HSCN Consumer] shall additionally have the right to novate this [HSCN Consumer Contract] to another CNSP.*
2. *Where the [HSCN Consumer] exercises its right to novate this [HSCN Consumer Contract] pursuant to clause [1], the [HSCN Supplier] shall undertake to do all acts and execute all documents which may be reasonably necessary to give effect to such novation, including, but not limited to:*
  - 2.1 *undertaking such exit management obligations as the [HSCN Consumer] and/or replacement CN-SP may reasonably request;*
  - 2.2 *the provision of detailed descriptions of the services to be transferred;*
  - 2.3 *the provision of full specifications of assets (excluding Core Network Assets), sub-contracts, software licences and any associated net book value and ongoing cost commitments;*
  - 2.4 *the provision of an inventory of any relevant [HSCN Consumer] data in the [HSCN Supplier's] possession or control;*
  - 2.5 *the provision of details of any key terms of any material third party contracts and licences, particularly as regards charges, termination, assignment and novation insofar as they relate to exclusive and non-exclusive assets;*
  - 2.6 *executing the transfer of any relevant assets (excluding Core Network Assets), and warranties;*
  - 2.7 *executing the transfer of any relevant sub-contracts;*
  - 2.8 *executing the transfer of any software licences;*

- 2.9 executing the transfer of any configuration information;*
  - 2.10 provision of a list of on-going and/or threatened material disputes in relation to the provision of the services;*
  - 2.11 provision of all information relating to any relevant transferring supplier employees;*
  - 2.12 executing a novation/assignment or transfer agreement or similar with the [HSCN Customer] and/or its replacement CNSP; and*
  - 2.13 the provision of such other material and information as the [HSCN Consumer] shall reasonably require.*
- 3. The [HSCN Supplier shall], if requested by the [HSCN Consumer], provide the information set out in paragraph [2] to the [HSCN Consumer] with 5 Working Days of the receipt of such request.*
  - 4. The [HSCN Supplier] shall, if requested by the HSCN Authority, provide the information set out in paragraph [2] to the HSCN Authority with 5 Working Days of the receipt of such request.*
  - 5. The [HSCN Consumer] and/or the HSCN Authority shall have the right to share the information provided under paragraph [2] with other CNSPs in order to secure a replacement CNSP and to execute a transfer of the services.*
- 4.1.2 In respect of HSCN Consumer Contracts that have been entered into by CNSPs prior to the date of this Commercial Addendum, each CNSP shall use best endeavours to agree with each HSCN Consumer with whom they hold a HSCN Consumer Contract a variation to such HSCN Consumer Contracts to incorporate the provisions set out in paragraph 4.1.1 above.