[2016] UKFTT 0289 (TC)

TC05062

Appeal number: TC/2014/05445

VAT – Recharge of payments made to joint employees under a Service Agreement – Whether Service Agreement reflected commercial and economic reality of relationship between the parties – Whether disbursements or consideration for a supply of services – Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) AGILISYS CONTACT SERVICES LIMITED

(2) INHEALTH (LONDON) LIMITED
(formerly InHealth (Netcare) Limited **Appellants**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS
REBECCA NEWNS

Sitting in public at the Royal Courts of Justice, London, on 14 – 16 December 2015 and 10 February 2016

The First Appellant did not appear and was not represented

Owain Thomas, instructed by KPMG LLP, for the Second Appellant

Sarabjit Singh, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. Under the terms of a Service Agreement, dated 31 January 2007, (the "Service Agreement") Agilisys Contact Services Limited ("ACS") recharged InHealth (London) Limited ("InHealth") remuneration it paid to individuals jointly employed by ACS and InHealth during the period between April 2007 and 31 March 2012. ACS and InHealth treated these recharges as disbursements which, as is accepted by the parties, are not liable to VAT. However, HM Revenue and Customs ("HMRC"), in a decision dated 23 October 2013, which was upheld on 31 August 2014 following a review, disagreed contending that the charges for the joint employees should have been treated as part of the consideration ACS received from InHealth for a supply of services.

2. Between 7 November 2012 and 31 October 2013 HMRC issued VAT assessments on ACS totalling £644,266. These assessments were paid by ACS which, under the terms of an indemnity clause in the Service Agreement, was reimbursed by InHealth. As a result InHealth has an immediate economic interest in the outcome of this appeal and, by directions issued by the Tribunal on 3 February 2015, was joined as a Second Appellant to these proceedings. In agreement with ACS the conduct of the appeal was handled by InHealth and, in the circumstances ACS was not represented. InHealth was represented by Mr Owain Thomas (now QC) and Mr Sarabjit Singh appeared for HMRC.

3. Also, we should say at this stage that, although carefully considered, in reaching our conclusions we have not found it necessary mention all arguments advanced on behalf of the parties or every aspect of the evidence before us.

Evidence

4. We were provided with bundles contained in five lever arch files which included correspondence between the parties, a copy of the Service Agreement and a copy of the Diagnostic Service Agreement for the London Region between InHealth and the Department of Health, dated 21 December 2006, (the "DH Contract"). Rather than burden this decision with extensive references setting out the provisions of the Service Agreement, the terms of employment of the individuals jointly employed by ACS and InHealth (the "joint employees") and the DH Contract we have, for convenience, appended the contractual terms to which we were referred during the hearing to this decision. Those of the Service Agreement in Appendix I, the terms of the joint employees at Appendix II and those of the DH Contract in Appendix III.

5. In addition to the correspondence and contracts the bundles included witness statements from:

(1) Sarah Bricknell, a solicitor, who was until 30 September 2015 the General Counsel and Director of Corporate Development of InHealth;

(2) Vivien Drake, InHealth's Contracts Manager responsible for overseeing all aspects of delivery and liaising with NHS London and who was the London Diagnostics Service project and mobilisation manager of InHealth when it was awarded the DH Contract;

5 (3) Paul Embley, the Chief Operations Officer of InHealth who was in charge of the operation of the DH Contract to whom Ms Drake reported;

(4) Suzanne Banks, of ACS who worked as a customer service advisor at the Patient Referral Centre ("PRC") established under the Service Agreement;

(5) Kalab Abbas, a Systems Co-ordinating Manager with ACS in charge of 10 systems, networks and telephony whose role was to ensure that calls were being answered;

(6) Sean Grimes, ACS Operations Director who was involved in the development of the tender submission for the InHealth project and who was responsible for overseeing the implementation of the Information Management 15 and Technology and the PRC on behalf of ACS;

(7) David Buchan, a "Programme Manager" employed by ACS;

(8) David Soanes, of Inhealth whose role was to make the IT procedures "robust" and improve the relationship between Inhealth and ACS; and

(9) Belinda Dhami, of InHealth, the Account Manager at the PRC

20 6. Sarah Bricknell, Vivien Drake and Paul Embly, who we find to be credible witnesses and whose evidence we accept, gave oral evidence and were cross examined by Mr Singh. We did not hear live evidence from any other witness

7. It is on the basis of this evidence that we make our findings of fact.

Facts

25 8. Traditionally where patients require diagnostic procedures such as MRI, CT, endoscopy etc, they are referred by their GPs to specified consultants at hospitals. However, in 2005, with the intention of saving time and money, the Department of Health ("DH") put out for tender for seven regional contracts to provide GPs with direct access to diagnostic services and, in appropriate circumstances, patients would 30 be referred directly from primary care for relevant diagnostic procedures to be delivered in a community setting.

9. InHealth, which was already in the business of providing diagnostic services achieved preferred bidder status for two of the advertised contracts but, after protracted and complex negotiations, and what Ms Sarah Bricknell described as the 35 change in the "vision for healthcare" after Gordon Brown succeeded Tony Blair as Prime Minister, entered into only one such contract, the DH Contract. The services under the DH Contract were of a type never previously implemented by the NHS and, with a value of approximately £100m, some 20% of its revenue, was of considerable importance to InHealth. The terms of the DH Contract required InHealth to retain

tight control over the services provided and accordingly very little of the service delivery was shared with third parties.

10. Because of the length and complexity of the negotiations there was little time once the DH Contract had been signed for InHealth to prepare to meet its contractual obligations as, under its terms (clause 3.3), the services, which required the operation of a call centre known as the Patient Referral Centre ("PRC"), were to be available from 7 April 2007.

11. In her witness statement Ms Bricknell describes how, from the earliest phase of the bidding process for the DH Contract, it was clear to InHealth that the operation of the PRC (as designed by a contractor engaged by InHealth) would be central to InHealth's Key Performance Indicators ("KPIs") under the DH Contract for the provision of diagnostic procedures.

12. Her statement continues:

> "InHealth needed a large scale patient referral and booking service to be up and running to meet the anticipated demand … It was evident to InHealth that a call centre operation was needed which was focussed on the effective interaction with patients from their first point of contact, through the booking and patient safety aspects of their tests, to the submission of a diagnostic test result to a referring GP. This activity needed to happen in a manner which allowed us to evidence the quality of these interactions and also the compliance for each patient with a series of time standards in the DH Contract. For example the contract required that each patient was contacted within a stipulated number of days, met the criteria for the test, was booked and examined at a time and place convenient to the patient and that the test results were transmitted to the referring GP within 48 hours of the examination.
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> This process, known as the patient 'pathway' involved an intricate process to ensure that all of the various points of delivery and contact with a patient were co-ordinated and managed to ensure that patients were treated properly, safely and in a timely manner. It also became evident that there would need to be a significant interface with referring GPs who were effectively local clients of the contract. In London there were approximately 6,000 of these individuals and an expectation that in excess of 10,000 patients per month would be referred.
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> InHealth was nevertheless very clear from the beginning that such a call centre should not be managed and operated in the way that many outsourced call centre operations typically work, because InHealth was mindful of the reputational damage which could be suffered from a poor initial contact with a patient or referring clinician. It was also the case that these regional diagnostic services were politically very sensitive and were perceived by the DH as high risk because of the increased involvement of the private sector in NHS provision and performance scrutiny would be intense.

> InHealth considered the correct approach for each aspect of its delivery to ensure that a quality service, ensuring for example, that all its radiology reporting would be undertaken by doctors in the UK with a UK medical practice. The general perception at the time was that call centre operators were often very remote from the service user, unaware of their needs, and consequently offered a poor service. InHealth was keen to achieve a very different customer experience for those who used its PRC. InHealth was also very aware that its own PRC would be handling 'patient sensitive confidential information' with the meaning of the Data Protection Act and any suggestion that this might be managed offshore or ineptly brought a significant extra layer of complexity and concern.
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> InHealth took all of these perception factors into account in considering its preferred approach to the delivery of the contractual requirements and concluded that UK-based operations and the ability to control and step in in the event of issues or incidents were critical to the success of the service."

13. As InHealth did not have the expertise to operate a call centre it put the PRC contract out to tender looking for a partner that that not only had sufficient technical capability but would also be willing to work in a close collaborative relationship. This was important as the call centre would be the first point of contact between a patient and any referring clinician and also to meet InHealth's obligations under the DH Contract. Having already selected another ACS company to provide the Information Management and Technology systems and, as it was able to accommodate the required timescale, was cost effective and flexible in the amount of input from InHealth, ACS, which was Mr Paul Embley said "knew the science of telephony", was chosen and the Service Agreement entered into.

14. Although at one stage it appeared that the DH would require sight of the Service Agreement it transpired in December 2006 that this would not be necessary as the Service Agreement would not be viewed as a "material subcontract" requiring the prior written consent of the DH (under clause 30.1 of the DH Contract) although this did not absolve InHealth from responsibility for the PRC (under clause 30.2 of the DH Contract).

15. As it was necessary to establish the PRC by 7 April 2007, although there was some discussion between InHealth and ACS including at least one draft version, the Service Agreement was drafted using a sub-contract "off the shelf" template which used what Ms Bricknell described as "standard or boiler plate terms not all of which were reflective of the relationship which emerged." For example, although clause 22.3 of the Service Agreement provides that:

> The relationship between the parties is that of independent contractors. Unless otherwise stated nothing in this Agreement shall constitute a partnership or joint venture between Client and ACS or constitute either acting as agent or commercial agent of the other for any purpose whatever and neither shall have the authority or power to bind the other or to contract in the name of or create liability against the other in any way or for any purpose save to the extent specifically referred to in

Clause 3 or as otherwise expressly authorised in writing by the other from time to time.

Ms Bricknell described the relationship between InHealth and ACS as a joint venture. She said that she did not believe that the terms of the Service Agreement accurately reflected the commercial and operational reality of the arrangement between InHealth and ACS for the operation of the PRC. Ms Bricknell said that the Service Agreement was not amended to reflect the commercial reality as "it would not have crossed our minds [to do so] because we did not focus on it [the Service Agreement] in the first place."

16. However, it was not disputed that the Service Agreement (at clause 8.2) correctly recorded that the advisors and administrative staff of the PRC would be jointly employed by InHealth and ACS.

17. The decision to jointly employ the advisers was the subject of much deliberation and an areas of concern for InHealth which, as both Ms Bricknell and Mr Embly explained, would have preferred to have been the sole employer of the staff but, as it did not have experience of running a call centre, InHealth considered joint employment to be the "next best thing" and which would enable it to retain a "high level of control over the staff on a day to day basis" and, as Ms Bricknell said, "to monitor and influence whether the services were up to the standard required by the KPIs of the DH Contract."

18. Although drafted by ACS as part of its tender for PRC contract the Statement of Work became schedule 7 to the Service Agreement and sets out, at "Section C: Services Performed", the following "summary of services", to be provided by the joint employees:

(1) Accept patient referrals from authorised authorities (the referrer) by web-based systems, secure email, post fax, hand delivery or Choose and Book;

(2) Conduct checks on the referral for completeness – ensuring that mandatory fields have been fully completed. If necessary direct queries to the Specialist Advisor team;

(3) Confirming receipt of the referral to the referrer; where necessary requesting any missing non-clinical information;

(4) If unable to receive the missing information from the referral, to advise the health service body;

(5) Where the referral is not already in electronic format, scanning the hardcopy and data capturing the content and making both available to the referrers on a pre-designated system;

(6) Contact the patient and arrange a suitable appointment for them to attend the diagnostic investigation. Confirming the appointment in writing enclosing a copy of the appropriate centre and diagnostic investigation information pack;

(7) If the appointment is outside the designated referral time agreed in the service levels, we will book the appointment and notify the referrer;

(8) If practicable, remind the patient about the appointment;

(9) If the patient does not attend the appointment, to advise the referrer and then attempt to contact the patient to make a replacement appointment;

(10) To handle requests, by post, email, fax or telephone, from the referrers for additional copies of diagnostic reports; and

(11) To handle general enquiries by post, email, fax or telephone, from patients on tier diagnostic appointment.

Paul Embley, the Chief Operations Officer of InHealth, agreed that this reflected what InHealth wanted as at the date of the Service Agreement. Vivien Drake however, explained that items (4) and (5) above were not accurate descriptions of the services provided by the PRC.

19. Although InHealth was based in High Wycombe as ACS had surplus capacity at its premises in Rochdale and also had a job fulfilment requirement under a partnership outsourcing arrangement with Rochdale Metropolitan Borough Council, which was satisfied by the recruitment of local people, it was decided to locate the PRC in Rochdale. As Sean Grimes, of ACS, explained setting up InHealth's operation using ACS facilities was seen as a "lower risk" approach which enabled InHealth to retain operational control as, unlike InHealth, ACS was not a specialist in the healthcare sector.

20. Due to its involvement with the PRC, InHealth was directly involved and in overall control of the recruitment, training, managing and supervision of the joint employees which, Ms Bricknell explained, would not have been the case if the PRC was regarded as being effectively a service operated for InHealth by a third party rather than as a joint venture as it "could never have been economic or appropriate for us to dedicate so much senior time and management to the interaction with the PRC."

21. InHealth's involvement in and control of these aspects of the PRC is apparent from the roles played by Paul Embley, Vivien Drake and Belinda Dhami all of whom were employed by InHealth and on its management team for the PRC.

22. Mr Embley joined InHealth in April 2001 as Operations Director for its newly formed InHealth Solutions Division which provided IT systems to NHS hospitals and GPs surgeries. From the time InHealth won the DH contract and during the first year of the PRC's service he was in Rochdale up to three days each week. Mr Embley recruited Ms Dhami in January 2007 as the Account Manager for the PRC. Although Mr Embley did not instruct the joint employees directly, he did speak to their managers if he was unhappy with their performance. He explained that this was because he would have found it "extremely uncomfortable" to bypass the management structure that had been put in place to reprimand a junior member of staff. However, as the PRC was the "hub of the service" when it was not working effectively or functioning properly Mr Embley did get involved and predicted that without the assistance of the InHealth team that the contract would have been cancelled within six months.

23. PRC operational meetings to resolve problems rather than enforce service level agreements were chaired either by Mr Embley or Ms Dhami. Also, as Mr Embley considered the operation of the PRC "critical to the whole contract", he instructed Ms Drake and Carl Healey, an ACS PRC team leader, to speak every day about any issues arising and ensure these were resolved in 24 hours.

24. Ms Drake joined InHealth in 2002 as a temporary software specialist and after assisting with bids and marketing became employed full time in the decontamination services and began to write the bids for national tenders becoming the bid manager for all diagnostic imaging bids. When InHealth was awarded the DH Contract she became project and mobilisation manager for this service reporting to Mr Embley. Ms Drake attended all of the management meetings, primarily in Rochdale but also at the London offices of ACS.

25. However, her day to day role was as a key contact for queries, which included anything to do with patient care. She was also responsible for the referrer helpline which was transferred to High Wycombe under her control very shortly after the service started. This was because Ms Drake was not satisfied that it was being properly managed by the PRC who, she said, "didn't understand clinical issues or how to respond to clinical enquiries in a confident or reassuring manner". From around 2009 when the service was re-transferred to Rochdale Ms Drake went there on a regular basis to sit with the agents "holding their hands and giving them guidance on how to deal with the queries" which was something ACS were unable to provide as their managers did not have a clinical background or clinical support. However, Ms Drake who had worked for BT and had been trained on 999 call handling understood patients experience and, as she had also worked for InHealth as a clinical assistant, was well placed to advise on how to react and respond.

26. A PRC daily report called a "DROL" was provided to Ms Drake. This set out where patients were in the 'pathway', eg whether they were booked or not. The DROL enabled InHealth to evaluate the performance of the service and highlight any areas of concern which Ms Drake would either report to Mr Embley or deal with herself either by returning the DROL with a list of actions for the agents to follow or, if not a simple matter, through their team leader. Ms Drake also received a daily 'DIAL SPIN' report. This showed how many times a patient had been contacted as the Service Agreement required at least three attempts to contact a patient were required before a referral could be rejected. Ms Drake would audit the DIAL SPIN report on a weekly basis and if a problem arose would contact the ACS staff at the PRC to resolve the issue.

27. In her witness statement Ms Drake gives an example of this in her dealings with a joint employee, the team leader of the "Exceptions Team" which was responsible for dealing with incomplete referrals and other administrative problems. Between April 2007 and 2011 when he left she had received some 1,700 emails from him seeking advice on clinical and non-clinical issues including problems with bookings, reports, issuing referrals, authorisation to book patients who ought not be in the system eg if they had previously not attended an appointment. Ms Drake was also

involved, with Mr Embley, Ms Dhami, and ACS managers, in staff appraisals for the joint employees.

28. Ms Dhami, who was recruited by Mr Embley in 2007 as PRC Account Manager, describes her primary duties as being to "instil the necessity for a customer care focussed culture into the PRC, to disseminate information to the PRC about forecasts of business volumes, to identify and delivery training requirements in relation to the jointly employed staff, to lead quarterly service level reviews, to act as the escalation point for customer complaints, to manage service levels, to manage any changes to the contract and to be the decision maker on the spot for InHealth." In addition, together with the operations managers, she wrote the telephony and call handling scripts for the advisers.

29. Although officially based at High Wycombe, during the first two years of the operation of the PRC Ms Dhami spent approximately 80% of her time at the PRC premises in Rochdale to deal with any issues that arose and ensure that ACS was delivering on KPIs and to implement new account processes and patient pathways. As she was concerned about the quality of candidates applying to the PRC from the Rochdale Job Centre Ms Dhami was also involved, along with the ACS operations manager, in the formation of a tailored interview process.

30. In addition she would liaise with the ACS manager on changes in process, clinical training of all staff including the joint employees. Although not generally involved in instructing the joint employees Ms Dhami did express her concerns to the ACS team managers, to whom the joint employees reported, when the need arose. In her witness statement Ms Dhami describes how, in April 2008, InHealth and ACS organised a team building event for managers and jointly employed PRC agents in addition to a two day course for the agents in which both companies gave presentations and conducted a question and answer session. In October 2011 an induction day for PRC staff was arranged at the new premises, Sandbrook House.

31. If Ms Dhami received any complaints about the PRC service, which were reported to her by the ACS managers or Ms Drake, Ms Dhami would try to first resolve them herself before handing them over to the complaints manager, an InHealth employee. For example, if an agent was rude to a patient Ms Dhami would request a recording of the conversation and would sit down with the ACS call centre operations manager and jointly decide the appropriate action. In one case Ms Dhami in conjunction with the ACS operations manager "had an agent taken off phones and transferred to a different team" as she did not consider the individual concerned to be capable.

32. The involvement of InHealth with the PRC is also described by ACS employees Suzanne Banks and Kalab Abbas.

33. Suzanne Banks, who had joined ACS as a customer service advisor on a contract for Anglo-Irish Bank ("AIB") explained that the only managers she would see on the AIB work were the ACS team leaders and the campaign manager and contrasted this with what happened at the PRC where the InHealth management team

"were virtually a constant presence on the call centre floor." Ms Banks records that Ms Dhami would look at the way work was scheduled and would occasionally address ACS managers on the call centre floor making it clear how staff should be re-assigned from incoming to outgoing calls if there was any backlog.

5 34. Kalab Abbas describes how Ms Dhami was regularly on the call centre floor and would speak to team managers about quality control and became "more and more" involved in the PRC which was "different to a normal outsourcing contract" and "felt like she [Ms Dhami] was part of the management team running the PRC."

35. In accordance with the Service Agreement (clauses 5 and 6) ACS delivered two 10 monthly invoices to InHealth in respect of the Recharged Costs, ie those costs relating to the jointly employed advisors for which no VAT was charged, and the other invoice in respect of the services provided by ACS, eg management charges, telephony support charges, printing charges and rechargeable stationery, to which VAT was added.

15 36. On the expiry of the Service Agreement on 31 March 2012 70 of the 71 PRC joint employees were transferred into the sole employment of InHealth.

37. On 12 June 2012 HMRC wrote to ACS requesting information in relation to the Service Agreement. Following correspondence between the parties HMRC wrote to ACS on 31 October 2012 stating their view that under the Service Agreement ACS 20 had supplied services to InHealth rather than acting as its agent when it had paid the joint employees. As stated above (in paragraph 2) between 7 November 2012 and 31 October 2013 HMRC issued VAT assessments on ACS totalling £644,266. These assessments were paid by ACS which, under clause 4.2 of the Service Agreement, was reimbursed by InHealth.

25 38. ACS appealed to the Tribunal on 8 October 2014. On 17 December 2014 InHealth filed a Notice of Appeal and on 17 December 2014 made an application to be joined as a second appellant to the proceedings. That application was granted on 3 February 2015.

Issue

30 39. It is common ground that the issue arising out of these facts is whether the payment by InHealth to ACS of the Recharged Costs, ie those costs relating to the jointly employed advisors, was part of the consideration ACS received for services it supplied to InHealth under the Service Agreement (as HMRC contend) or (as InHealth contends) properly treated by InHealth as disbursements.

35 *Correct approach to determination of issue*

40. In its judgment in *HMRC v Loyalty Management UK Ltd* [2010] STC 2651 the Court of Justice of the European Union ("CJEU") stated, at [39]:

> "It must also be recalled that consideration of economic realities is a fundamental criterion for the application of the common system of

> VAT (see, first, as regards the meaning of place of business for the purposes of VAT, Case C-260/95 *DFDS* [1997] ECR I-1005, paragraph 23, and Case C-73/06 *Planzer Luxembourg* [2007] ECR I-5655, paragraph 43, and, secondly, as regards the identification of the person to whom goods are supplied, by analogy, Case C-185/01 *Auto Lease Holland* [2003] ECR I-1317, paragraphs 35 and 36)."

41. It is accepted in the present case that in order to determine the nature of a supply it is necessary to have regard to the economic reality of any arrangements. As Lord Reed observed in *HMRC v Aimia Coalition Loyalty UK Ltd* [2013] STC 784, at [38]:

> "… when determining the relevant supply in which a taxable person engages, regard must be had to all the circumstances in which the transaction or combination of transactions takes place."

42. A similar approach was adopted by the Supreme Court in *HMRC v Secret Hotels2 Ltd* [2014] STC 937 in which Lord Neuberger, under the sub-heading "The correct approach in domestic law", said:

> "31. Where parties have entered into a written agreement which appears on its face to be intended to govern the relationship between them, then, in order to determine the legal and commercial nature of that relationship, it is necessary to interpret the agreement in order to identify the parties' respective rights and obligations, unless it is established that it constitutes a sham.
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> 32. When interpreting an agreement, the court must have regard to the words used, to the provisions of the agreement as whole, to the surrounding circumstances in so far as they were known to both parties, and to commercial common sense. When deciding on the categorisation of a relationship governed by a written agreement, the label or labels which the parties have used to describe their relationship cannot be conclusive, and may often be of little weight. As Lewison J said in *A1 Lofts Ltd v Revenue and Customs Commissioners* [2010] STC 214, para 40, in a passage cited by Morgan J:
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>> "The court is often called upon to decide whether a written contract falls within a particular legal description. In so doing the court will identify the rights and obligations of the parties as a matter of construction of the written agreement; but it will then go on to consider whether those obligations fall within the relevant legal description. Thus the question may be whether those rights and obligations are properly characterised as a licence or tenancy (as in *Street v Mountford* [1985] AC 809); or as a fixed or floating charge (as in *Agnew v IRC* [2001] 2 AC 710), or as a consumer hire agreement (as in *TRM Copy Centres (UK) Ltd v Lanwall Services Ltd* [2009] 1 WLR 1375). In all these cases the starting point is to identify the legal rights and obligations of the parties as a matter of contract before going on to classify them."
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> 33. In English law it is not permissible to take into account the subsequent behaviour or statements of the parties as an aid to

> interpreting their written agreement – see *FL Schuler AG v Wickman Machine Tool Sales Ltd* [1974] AC 235. The subsequent behaviour or statements of the parties can, however, be relevant, for a number of other reasons. First, they may be invoked to support the contention that the written agreement was a sham – ie that it was not in fact intended to govern the parties' relationship at all. Secondly, they may be invoked in support of a claim for rectification of the written agreement. Thirdly, they may be relied on to support a claim that the written agreement was subsequently varied, or rescinded and replaced by a subsequent contract (agreed by words or conduct). Fourthly, they may be relied on to establish that the written agreement represented only part of the totality of the parties' contractual relationship.
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> 34. In the present proceedings, it has never been suggested that the written agreements between Med and hoteliers, namely the Accommodation Agreements, were a sham or liable to rectification. Nor has it been suggested that the terms contained on the website ("the website terms"), which governed the relationship between Med and the customers, namely the Terms of Use and the Booking Conditions, were a sham or liable to rectification. In these circumstances, it appears to me that (i) the right starting point is to characterise the nature of the relationship between Med, the customer, and the hotel, in the light of the Accommodation Agreement and the website terms ("the contractual documentation"), (ii) one must next consider whether that characterisation can be said to represent the economic reality of the relationship in the light of any relevant facts, and (iii) if so, the final issue is the result of this characterisation so far as article 306 is concerned.
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> 35. This is a slightly more sophisticated analysis than the single issue as it has been agreed between the parties, as set out in para 16 above, but, as will become apparent, at least in the circumstances of this case, it amounts to the same thing. In order to decide whether the FTT was entitled to reach the conclusion that it did, one must identify the nature of the relationship between Med, the hotelier, and the customer, and, in order to do that, one must first consider the effect of the contractual documentation, and then see whether any conclusion is vitiated by the facts relied on by either party."

43. Such an approach was adopted by the Tribunal (Judge Avery Jones and Mr Stafford) in *CGI Group Europe Limited v HMRC* [2010] SFTD 1178 ("*CGI*") where it said, at [14]:

> "… One must start with the contractual position and then test whether this really reflects "the precise way in which performance satisfies the interests of the parties."

Discussion and Conclusion

44. It is accepted that we should adopt the approach of the Tribunal in *CGI* and should therefore start with the Service Agreement. However, Mr Singh contends that we can take more than the correct approach from *CGI*. The issue before the Tribunal in *CGI* was:

> "… whether VAT is chargeable on the proportion of the consideration for outsourcing the IT department of Cox Services limited ("Cox") (now Equity Insurance Group Limited) to the Appellant that is referable to the re-charge of employee costs where the employees are jointly employed by the Appellant as provider, and Cox as recipient, of the service. The issues include, although the parties are not in agreement about the correct approach (1) whether there is in fact a joint employment, (2) whether there is a single supply of IT services, or whether there is a supply of IT services plus a re-charge of salaries of the jointly employed staff …"

As in the present case:

> "The parties are therefore starting at opposite ends of a spectrum: Miss Whipple [counsel for HMRC] is contending that this is effectively a normal outsourcing with the Appellant using its own staff, and it is irrelevant that they may also be employed by Cox; and Mr Prosser [counsel for the Appellant] that the Appellant is effectively managing Cox's staff who are working for Cox's benefit in order to supply the Services" (see at [12]).

45. The Tribunal continued:

> "14. We consider that Mr Prosser is right in contending that it is necessary to start by analysing the contractual position, although we do not agree with him that once we have decided that there is joint employment the VAT result follows. Nor do we agree with Miss Whipple's economic substance approach of saying that outsourcing always involves a single supply of services. One must start with the contractual position and then test whether this really reflects "the precise way in which performance satisfies the interests of the parties." The Master Services Agreement is an agreement for providing the Services in accordance with service levels. So far as the staff are concerned the following provisions are relevant:
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> (1) At the start the employees working on the services supplied under the Master Services Agreement were Cox's former employees who became the Appellant's employees by TUPE and then Cox's employees jointly by agreement. The Appellant must not change their terms of service in the first six months without Cox's consent. The Appellant could not dismiss Key Employees (as defined) in the first 12 months.
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> (2) By agreement between the two employers, new employees spending a regular amount of time each month on Cox's business are to be made joint employees. And on ceasing to spend a regular amount of time each month on Cox's business there is provision for discussions leading to their becoming the Appellant's sole employees or being made redundant. By agreement with the employee if the performance of the duties requires a joint employee to work wholly on clients other than Cox then on notice from the Appellant, Cox ceases to be his employer jointly with CGI and the employer becomes the Appellant solely.

(3) The Appellant has control over all aspects of the employment of joint employees.

(4) The Services are provided through Supplier Personnel defined as any person in respect of whom the Supplier [the Appellant] exercises control including, but not limited to the Supplier's directors, employees and agents and the Sub-Contractors of the Supplier, in any such case who are assigned or engaged by the Supplier from time to time to perform the Supplier's obligations under this Agreement. While not mentioning the joint employees specifically they are included because they are the Appellant's employees and the Appellant exercises control over them. Presumably it also includes the Appellant's sole employees who spend less than a regular amount of time each month on Cox's business. The appointment of Supplier Personnel and the nature and duration of their assignment is at the Appellant's discretion. Cox could only request the Appellant to replace any Supplier Personnel who has shown evidence of incompetence.

(5) The employment costs of joint staff are paid by the Appellant as agent which re-charges an amount that is calculated to reflect the staff time used for Cox's benefit.

(6) There is no agreement with Cox to manage the joint staff as such; it is merely a consequence of the staff being under the Appellant's control.

15. We do not consider that all these provisions can live together satisfactorily. If the whole of the employment costs of staff working for Cox's benefit are paid by the Appellant as agent, this implies that the staff are effectively working solely for Cox when they are working for Cox's benefit and not for the Appellant, with the result that Cox is responsible for paying them (or reimbursing the Appellant if it pays them). But if that is the case the terms of the Master Services Agreement do not seem to be consistent with it. While the Appellant would need to be given power to control the staff, there would surely be no question of its appointing Supplier Personnel and determining the nature and duration of their assignment. Equally there would be no question of Cox requesting the Appellant to replace any Supplier Personnel who has shown evidence of incompetence. These are not matters of managing Cox's staff but of deciding whether they are Cox staff at all. If the staff are effectively working solely for Cox we would expect the Agreement to provide for the management of the staff as a primary obligation, and to provide the Services in accordance with service levels in so far as their management of the staff made this possible. We would also expect to find exact reimbursement of the employment costs based on the time spent on Cox business as calculated from the time sheets which are available. It may be that the Agreement provides for an approximation to this, but it is an indirect one because the basic charge is fixed, volume increases have a fixed HR component estimated in advance, and time charges are at a fixed rate per hour rather than the actual rate of the staff doing the job."

46. Mr Singh, who does not dispute that the employees concerned in the present case are jointly employed by InHealth and ACS, submits that it was the supplier

(which in the present case would be ACS) in *CGI* which had control over all aspects of the employment of the joint employees and as in the present case there was no agreement with the customer (InHealth) to manage the joint employees. However, we agree with Mr Thomas who says that as *CGI* is distinguishable on its facts it does not provide us with any assistance, in particular although there was a service agreement in *CGI* it was not contended in that case that it did not reflect the economic reality of the arrangements between the parties whereas this is the central issue in the present case.

47. Therefore, as directed by Lord Neuberger *Secret Hotels2*, it is necessary to first consider the effect of the Service Agreement, and then see whether any conclusion is vitiated by the facts relied on by either party. In doing so we do not, in the absence of any suggestion that the Service Agreement constitutes a sham or artificial arrangement, consider ourselves to be restricted from having regard to the wider circumstances beyond its terms. It is clear from *Secret Hotels2* in which, although there was no allegation of sham or artificiality, the Supreme Court nevertheless went through various factors (at [45] to [50]) relating to the wider circumstances relied on as being relevant albeit finding that these did not undermine the existence and nature of the agency arrangement in that case. It did not simply say that because there was no artificiality it was only necessary to consider the contractual terms.

48. Therefore, turning to the effect of the Service Agreement. By its very title and recitals, particularly recital C, it would appear that under its terms ACS is to provide services to InHealth. The definitions of Admin Staff, Advisor, Relevant Employee, Service Levels, Services and Staff in clause 1.1 also appear to have been drafted on this basis (ie that ACS will provide services to InHealth and that it will use staff including the joint employees to do so), as indeed do clauses 3.1, 3.4, 4.1, 5.3, 6.1, 6.2(a), 7.3 and 7.4.

49. References are made in the Service Agreement to the joint employees particularly at clause 8, clause 26, schedule 5 'Employment Matters', schedule 7 'Statement of Work' and also in the employment contract of the joint employees.

50. Clause 22 of the Service Agreement, which Ms Bricknell says does not reflect commercial reality, describes the relationship between InHealth and ACS as "that of independent contractors" and expressly states that nothing in the Service Agreement shall "constitute a partnership or joint venture" between them.

51. Mr Singh contends that this is a detailed agreement governing obligations of each party and nature of their relationship and that it is clear from this, together with all the evidence, that the relationship between InHealth and ACS was not one of a joint venture or something similar but rather that services were provided by ACS to InHealth by its employees and those it jointly employed with InHealth who were under its (and not InHealth's) control. He says that although it is claimed that the Service Agreement was hastily entered into, as there was at least one draft before the final version, the parties must have been content with its wording otherwise they would not have agreed to its terms. He also refers to these terms, described as "off the shelf" or "boiler plate" by Ms Bricknell, pointing out that such a description is not appropriate for the Statement of Work, an ACS tender document, which must, he

submits, have been carefully considered by InHealth before it reached agreement with ACS.

52. Although Mr Singh accepts, as he must in the light of *Secret Hotels2* (see paragraph 42, above), that it does not always follow that other than in cases of abuse or sham the contract is determinative, he contends that the argument advanced on behalf of InHealth, that the Service Agreement does not reflect the economic reality of the relationship between it and ACS, fails to focus on the Service Agreement and instead relies on after the event commentary from its own witnesses, in particular Ms Bricknell, in relation to the circumstances in which contracts were entered into. He submits that this is "dangerous approach" as it relies on what one party has said years later to define the nature of a relationship entered into between two parties.

53. However, we disagree. As Mr Thomas submits the appeal, which is by both InHealth and ACS, is largely based on contemporaneous documentation and, given the nature of litigation, it was unfortunately inevitable that there would a delay between the commencement of HMRC's initial enquiry in June 2012, its subsequent decision and this hearing. The evidence of the witnesses, which we accept, who were all involved in establishing the PRC and in its operation is clearly relevant especially in relation to the services supplied by the joint employees.

54. It is because either party can rely on parts of the Service Agreement to support its case (eg the joint employment contracts support InHealth whereas the Statement of Work assists HMRC) that it is necessary to analyse the facts in order to determine whether the services of the joint employees were provided to ACS which in turn provided its services to InHealth under the terms of the Service Agreement or whether the joint employees provided their services to both InHealth and ACS on the basis of a collaborative venture to deliver the PCS.

Whether joint employees working solely for ACS

55. It is not disputed that that the services, more or less as summarised in the Statement of Work (see paragraph 18, above), were provided by joint employees. This, as Mr Singh says, is consistent with clause 1.1 of the Service Agreement which defines "staff" as including the Advisers, Admin staff (both of which were, in accordance with clause 8, joint employees), PRC Management Staff and any other employees (ACS employees). It is also clear that under the Service Agreement (clause 3.8) ACS is required to provide sufficient space and facilities to enable Staff to provide the services and (under clause 8.4(a)) to ensure that joint employees are "suitable, skilled, experienced and competent and use the appropriate level of skill, care and diligence in the provision of the services".

56. As to whether the joint employees are working solely for ACS Mr Singh invites us to adopt the approach of Sales J (as he then was) in *R (on the application of Accenture Services Ltd v HMRC (Accenture (UK) Ltd and another, interested parties)* [2009] STC 1503. This case concerned the outsourcing of employees from Barclays to Accenture (UK) Limited ("AUK") which transferred them to Accenture Services Limited ("ASL") which in turn seconded them back to Barclays with which it had a

shared management function. By concession, formulated by reference to the definition of "employment business" contained in s 13(3) of the Employment Agencies Act 1973, contained in Notice 700/34, HMRC allowed an employment business which employed staff to hire staff to a client's business without charging VAT on their salary costs subject to certain conditions.

57. Considering the meaning of the phrase "*under the control of*" in s 13(3) of the Employment Agencies Act 1973 Sales J said:

> "41. In the event, HMRC did not contend that the notion of "control" in s 13(3) was to be equiparated with the degree of control which an employer has in relation to its employee; rather, they submitted that the notion of "control" in s 13(3) was significantly wider than that indicated by Mr Hitchmough [counsel for Barclays] and that the sort of factors relating to the type of control relevant to identifying a contract as an employment contract were relevant, by broad analogy, to the examination whether the requisite degree of "control" has been transferred for the purposes of s. 13(3) in any given situation. I accept both these points. The word "control" in s. 13(3) is not expressly qualified and there is no reason to give it anything other than its natural meaning, modified to the limited degree necessary to allow for the points made in para. [40] above. In my view, the notion of "control" in s. 13(3) has regard to the practical levels of control transferred and retained under the supply arrangement, without any artificial limitation of the kind proposed by Mr Hitchmough, and requires an overall evaluative judgment to be made whether the predominant power of control of what the employee does has been transferred by the supplier to "other persons".
>
> 42. This conclusion is also supported by the view I take on the second issue which arose on the meaning of the phrase, "under the control of", in s. 13(3). Mr Clayton [counsel for HMRC] and Mr Hitchmough submitted that, in a situation where, as here, there is a significant sharing of control between the supplier of staff and "other persons", the phrase means that the staff supplied are to act under the predominant control of such "other persons". Mr Clayton then submitted that, on the facts, Barclays/AUK did not have predominant control over the staff supplied by ASL; Mr Hitchmough submitted that they did. Mr Sinfield [of Lovells LLP for ASL], however, submitted that it is sufficient, in such a situation, for the "other persons" to have *any* significant power of control as to how the staff supplied are to do their job. He submitted that, even if it could not be said that Barclays/AUK had predominant control over those staff, Barclays (and AUK) clearly did have *some* significant powers of control as to how such staff should do their job.
>
> 43. On this point of construction, I prefer the submission of Mr Clayton and Mr Hitchmough to that of Mr Sinfield. In my view, the words, "the control", in s. 13(3) cannot be reconciled with the idea that *any* significant level of control is sufficient. The use of the definite article implies that it is some full measure of control which is required before the test is satisfied. In a situation where elements of control are divided between different persons, the natural meaning of "the control"

is the predominant practical control over what the transferred employee does. This view is also supported by the overall scheme of the 1973 Act, which originally created a burdensome licensing and regulatory regime applicable to "employment businesses". It is not plausible to suppose that Parliament intended to bring businesses within the scope of such a regime on the basis of the extremely diluted test put forward by Mr Sinfield."

58. In relation to identifying under whose direction the employees were working Sales J said:

"48. Next, an issue arose as to what was meant by the phrase, "come under the direction of [the recipient] company", in paragraph 2.1 of the Notice, in circumstances where, as here, different persons exercised different elements of managerial control over the seconded staff. In line with their submissions regarding the interpretation of s. 13(3) of the 1973 Act, Mr Clayton and Mr Hitchmough submitted that the relevant test to be applied was whether the seconded ASL employees came under the predominant control of the recipient company (that is to say, on my interpretation of the Concession, Barclays). Mr Sinfield, however, in line with his submission regarding s. 13(3), submitted that the relevant test was whether *any* degree of direction was available to the recipient company.

49. On this issue, I again accept the submission of Mr Clayton and Mr Hitchmough. The use of the definite article ("*the* direction") in this context again imports the idea that it is some full measure of directive control which is required before the test in paragraph 2.1 is satisfied. In a situation where elements of control are divided between different persons, the natural meaning of "the direction" (in the phrase, "comes under the direction of …") is the predominant practical power to direct the transferred employee to do things. This interpretation is also supported by the general scheme of the Concession and by the policy background for HMRC's formulation of the Concession. That formulation was adopted to reduce the scope for avoidance of VAT (which had been found to be excessively wide under the original staff hire concession) and to provide for equivalent treatment of employment agencies and employment businesses. The importance of the objective of keeping the Concession within narrow bounds also reflected the need for HMRC to avoid departing too far from the requirements of EU law on VAT, according to which VAT should be charged on the full amount of consideration in relation to the supply of staff, since departure from those requirements would tend to undermine the need for equal application of EU law throughout the EU Member States and could give rise to difficulties with the EU Commission. Yet on Mr Sinfield's suggested interpretation, substantial scope for avoidance of tax would appear to be preserved for any arrangement involving an employment business. It is difficult to see why this would have been thought desirable – particularly since on his suggested interpretation employment businesses would on the face of it be put in a better position than employment agencies. This is because where an employment agency introduces staff, the staff are then employed by the client (i.e. under that client's full direction, as their

> employer); but if the Concession is not limited to employment businesses which provide a closely comparable service (i.e. by providing their own staff to act under the predominant direction of the client company), then those businesses would have greater scope to provide services to clients while avoiding VAT. On Mr Sinfield's proposed interpretation, the Concession would go further than the intended and declared policy aim of putting employment agencies and employment businesses in the same position."

59. By adopting such an approach in the present case Mr Singh contends that is clear from the Service Agreement that that the joint employees were under the predominant control and predominant direction of ACS not InHealth.

60. However, we agree with Mr Thomas, who does not dispute that the joint employees were managed at least in part by ACS, that HMRC's reliance on *Accenture* is misplaced as it, *Accenture*, involved the construction of an extra statutory concession, the supply of staff by an employer to another person or the meaning of "*under the control of*" that other person under s 13(3) of the Employment Agencies Act 1973, which, Sales J agreed (at [40]):

> "… must indicate something less than the full form of control which is required to establish an employment relationship under a contract of service"

whereas it is not disputed that the present case concerns joint employees.

61. As such, although we do not consider a predominant control test to be appropriate, having regard to the evidence and our findings of fact, particularly the direct involvement of senior InHealth personnel with the recruitment, training, managing and supervision of the joint employees that, although managed by ACS, they were under the overall control of InHealth. As Mr Thomas contends, the evidence is consistent with a collaboration between InHealth and ACS and with the joint employees providing their services to InHealth as one of their employers.

62. Accordingly we do not consider the joint employees to have been working solely for ACS

Whether PRC provided by ACS to InHealth

63. The provision of the PRC by InHealth was a requirement under the terms of the DH Contract.

64. Mr Singh contends that InHealth contracted out this obligation under the DH Contract to ACS but not in "some kind of classic outsourcing agreement where one party outsources to an external supplier and then disappears from the scene" and accepts although that InHealth was closely involved in its operation maintains that the provision of services to it was made by ACS. He also accepts that InHealth's involvement in training, supervision and disciplinary matters, while not about control of the joint employees, was about its involvement in the manner in which the services were provided.

65. Indeed the evidence of Ms Bricknell was that InHealth entered into the Service Agreement with ACS precisely because it had such involvement and the ability to "monitor and influence whether the services were up to the standard required by the KPIs of the DH Contract". Such a role for InHealth in respect to the day to day operation of PRC and the provision of its services is also consistent with evidence of the other witnesses. For example, PRC operational meetings being chaired by Mr Embley or Ms Dhami, the call handling scripts being written by Ms Dhami, daily conversations between Ms Dhami (of InHealth) and Carl Healey (of ACS) in relation to any issues arising and resolution of these issues within 24 hours, Ms Drake's attendance of management meetings, "holding the hands" of the advisers "giving them guidance on how to deal with queries" and involvement in staff appraisals of the joint employees. In addition there are the 1,700 emails to which Ms Drake referred in her evidence in relation to advice on clinical and other issues including bookings, reports, issuing referrals and authorisation for booking patients.

66. The extent of such involvement by InHealth in the operation of the PRC is clearly inconsistent with Service Agreement which, as we have previously observed (in paragraph 48, above), does not envisage any role for InHealth but provides for the PRC services in their entirety to be supplied to it by ACS. It therefore follows that the reality of the situation was that ACS did not provide the PRC to InHealth under the terms of the Service Agreement.

Conclusion

67. Therefore, having considered the Service Agreement, the effect of our conclusions that, on the evidence, the joint employees were working for both InHealth and ACS, not solely for ACS, and that the PRC was not provided by ACS to InHealth in accordance with the terms of the Service Agreement, is that the Service Agreement Service Agreement does not reflect the economic and commercial reality of what is, as the evidence shows, essentially a collaborative relationship between InHealth and ACS in the provision and operation of the PRC.

68. As such that relationship cannot be categorised, as HMRC contend, as the supply of services by ACS to InHealth, rather it is a collaborative venture in which ACS provided the infrastructure and science of telephony and InHealth the medical and diagnostic expertise allowing them to jointly select, employ, train and manage the joint employees with the costs of those joint employees being recharged by ACS to InHealth as disbursements which, as is common ground, are not subject to VAT.

69. Therefore, for the above reasons, we allow the appeal.

Right to apply for permission to appeal

70. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

5

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 26 April 2016

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15

APPENDIX I

20

Terms of the Service Agreement to which reference was made during the hearing

Service Agreement

Between

25

AGILISYS CONTACT SERVICES LTD

and

INHEALTH NETCARE LTD

This Agreement (hereinafter referred to as the **'Agreement'** is entered
30
into as of the … day of 2007

PARTIES

1. **Agilisys Contact Services Ltd** a company incorporated in England with registered number … and having its registered office at [*address*] (hereinafter referred to as **'ACS'**) and

35

2. **InHealth Netcare Limited** a company incorporated in England with registered number … and having its registered office at [*address*] (hereinafter referred to as **'Client'**)

RECITALS

40

A. Client has entered into a contracts (sic) with the Secretary of State for Health ('**Authority**') to provide diagnostic centers' for patients and all associated information technology in the London regions of the ISDP Programme and intends to enter into a similar contract with the

Authority for the Eastern Region hereinafter referred to as the *Diagnostic Services Agreement(s)* or separately DSA London and DSA East.

B. Client wishes to sub-contract certain of its obligations relating to the receipt and processing of diagnostic information from approved NHS referrers in order to book patient appointments on behalf of Client.

C. Whereas the parties wish to enter into an agreement whereby ACS will provide the Services (defined below) to Client on such terms and conditions contained hereunder.

1. Definitions and Interpretation

1.1 For the purposes of this Agreement:

…

"Admin Staff" means the administrative staff required to provide the Services and employed by ACS and Client jointly;

"Advisor" means the customer service advisors employed jointly by ACS and the client but excludes, for the avoidance of doubt. The Specialist Advisers;

…

"Services" are any and all services to be provided to the Client by, or on behalf of, ACS under this Agreement including, without prejudice to the foregoing generality, those services set out as 3. Section C of the Statement of Work;

…

"Specialist Adviser" means the specialist clinical service (Clinical Triage) adviser employed by Client to perform the obligations set out in the Statement of Work;

"Staff" means the Advisers, Admin Staff, PRC Management Staff and any other employees, contractors or personnel used by ACS to provide the Services;

"Start Date" means 2ND OF APRIL 2007;

"Statement of Work" means the Statement of Work in the Agreed form from time to time in accordance with this Agreement;

…

2A Contract Period

2A.1 Subject to Clause 2A.2, this Agreement shall commence on the date first written above and shall continue, unless terminated earlier, in accordance with its terms for a period of five (5) years from the Start Date (the **"Contract Period"**)

2A.2 This Agreement is wholly conditional upon the Client executing definitive agreements with the Authority for the Wave 2 Independent Diagnostics procurement for the London Region (**"London Financial Close"**). The decision whether the Client has reached London

Financial Close shall be made solely by the Client in its absolute discretion and ACS is to be notified promptly after such decision has been made.

5 **3. The Services**

3.1 ACS shall provide the Services to the Client from the Start Date in accordance with:

(a) applicable Law;

(b) the Compliance Procedures;

10 (c) the Operational Procedures;

(d) Good Industry Practice;

(e) the Statement of Work;

(f) the Service Levels; and

(g) all applicable Consents,

15 until the Agreement expires at the end of the Contract Period or is terminated in accordance with Clause 7.

3.2 During the Implementation Period, ACS shall perform the organisational, technological and personnel related steps in accordance with the Implementation Plan.

20 …

3.4 If, at any time after the Start Date for any reason other than the Client's Default under this Agreement, ACS fails to meet any of the Service Levels over the relevant Assessment Period, notwithstanding any other provision in this Agreement, ACS shall:

25 (a) be liable for Performance Deductions as set out in the Statement of Work;

(b) arrange such additional resources as are necessary; and

(c) take remedial action to correct such failure as soon as possible thereafter.

30 …

3.7 Notwithstanding Clause 3.5:

(a) Client may by giving not less than 8 weeks prior written notice to that effect, require ACS to increase the number of Advisors or Admin Staff by such number as it shall specify with effect from the end of 35 such notice period; and

(b) Client may by giving not less than 6 weeks prior written notice to that effect, require ACS to reduce the number of Advisors or Admin Staff by such number as it shall specify with effect from the end of such notice period, provided that as a result thereof:

(i) Unless and until the Effective Date for DSA East (as defined in DSA East and presently expected to be July 2007), the total number of Advisors shall not fall below 40 Full Time Equivalents (FTE); and

(ii) Following the Effective Date for DSA East the number of Advisors shall not fall below 50 FTE.

…

3.8 ACS agrees throughout the duration of this Agreement:

(a) to provide such appropriate and sufficient space and facilities at the Site to locate all the Staff providing the Services (as specified in the Statement of Work and increased/decreased pursuant to Clause 3.7) and the Specialist Advisors, together with the relevant Workstations and to enable such persons to provide the Services in accordance with this Agreement as the Client shall reasonably require.

…

4. The Charges

4.1 In consideration for the performance of the Services, Client agrees to pay ACS the Charges monthly in arrears at the rates and in the amounts specified in Clause 6 and Schedule Part 1 of the Statement of Work. The Manpower Costs referred to therein will be indexed.

4.2 The Charges shall be deemed to exclude VAT. VAT will be charged on all invoiced amounts excluding the costs relating to the employment of the Advisors and any other employees that are jointly employed by ACS and the Client (**"the Recharged Costs"**) and any element of the disbursements where VAT is not chargeable. In the event that HM Revenue and Customs determine, for whatever reason, that ACS should have charged VAT on the Recharged Costs, ("an HMRC determination") the Client agrees to indemnify ACS in respect of any VAT assessed by HM Revenue and Customs including any interest and penalties relating to such determination and (subject to the provisions of Clause 7.1(c) hereof), agree to bear all future invoicing with VAT as appropriate.

4.3 ACS shall provide the Client with a schedule of suggested continuous improvements prior to their introduction and shall provide details of progress on continuous improvement implementation in writing (as part of any report published under Clause 5) in advance of each review meeting under Clause 5 for discussion at such meeting.

4.4 ACS shall not (without Client's prior written consent) introduce any continuous improvements if such measures would increase the Charges or reduce the quality of the Services.

5. Reviews and Reporting

…

5.3 ACS shall provide the Client with a monthly report within 14 days of the end of each Contract Month showing whether it is meeting the

Service Levels and containing a calculation of Service Credits which are to be deducted from next month's charges in accordance with Schedule 7 Part 5 of the Statement of Work

…

6. Payment

6.1 ACS shall deliver to the Client two invoices in respect of all Charges as soon as practicable following the fifteenth (15th) day of each Contract Month (running from the 16th of the previous month to the 15th of the current Contract Month). One invoice shall include the amounts due in respect of the Services (Services invoice) provided by ACS and the other invoice shall contain, the Recharged Costs relating to the employment of the Advisors, Admin Staff and any other staff under joint employment with the Client. The Services invoice shall be subject to VAT in so far as VAT had been payable on the Charges included in the invoice by ACS. The second invoice shall be in relation to the Recharged Costs and will not be subject to VAT. The Client shall pay the undisputed amounts of such invoices within thirty (30) days from the invoice date (the "Due Date").

6.2 Each invoice presented pursuant to Clause 6.1 shall include at least the following information:

(a) details of the Services provided by ACS to Client during the period to which the invoice relates (including, without limitation, the details of and number of the Staff);

(b) …

…

7. Termination and Consequences of Termination

7.1 …

7.2 …

7.3 On the occurrence, in respect of ACS, of an ACS Event of Default (as defined below), Client may terminate this Agreement in whole or in part immediately by written notice to ACS.

7.4 "**ACS Event of Default**" means any of the events set out below:

7.4.1 *Breach of other obligation*

ACS is in material breach of any of its obligations under this Agreement and:

(a) Client serves a notice on ACS identifying the breach(es); and

(b) ACS fails to remedy such breach(es) within 30 (thirty) Business Days of the notice described in (a).

7.4.2 *Persistent Default*

Without prejudice to any other provision of this Clause 7.4, if ACS commits persistent breaches of its obligations under this Agreement. Persistent breaches shall consist of a failure to achieve the same service level as set out in Section C of Schedule 7 (the Statement of Works) for 3 consecutive months in any rolling period of 12 months for the duration of the Agreement.

7.4.3 …

7.4.4 *Validity of Agreement*

Any act, condition, authorisation or thing required in order:

(a) to enable ACS lawfully to enter into, exercise its rights or perform its obligations under this Agreement and any other documents to be executed in connection with; or

(b) to ensure that the obligations expressed to be assumed by ACS in this Agreement and any other documents executed in connection with it are lawful, valid and binding,

which is not duly done, fulfilled, obtained or performed within any time available to ensure compliance or is terminated, revoked or altered or declared illegal, invalid or unenforceable.

…

8. Employees

8.1 ACS shall ensure that all Staff perform their specified role in respect of the relevant Service or Service Level(s) according to their respective Contracts of Employment, the Statement of Work and in accordance with the Compliance Procedures. ACS shall ensure that it will not reassign or remove any of the Advisors or Admin Staff without having notified the Client prior to any such change. The Client, acting reasonably, shall have the right from time to time to request ACS to remove and replace any of the Advisors or Admin Staff and the Client shall state the reason for such requests and ACS shall act reasonably in relation to any such request. ACS shall take into account any reasonable representations made by the Client concerning any Advisors or Admin Staff as a result of notifications pursuant to this Clause 8.1.

8.2 ACS and the Client shall jointly employ the Advisors and the Admin Staff. The parties agree that the Advisors and the Admin Staff shall be employed pursuant to a contract of employment on the terms set out in the pro forma contract of employment attached at Appendix 1. Client shall employ the Specialist Advisers. ACS shall employ the PRC Management Staff.

8.3 ACS agrees that (as well as in relation to all persons solely employed by ACS) it shall be responsible for all salaries and emoluments in relation to the Advisors and Admin Staff who are jointly employed by ACS and the Client and that the Client shall have no liability in relation to the cost of such salaries and emoluments.

ACS agrees to indemnify on demand the Client in relation to all proceedings, demands, claims, costs or liabilities relating to the employment (or termination of employment) of the Advisors or Admin Staff, including but not limited to any costs in relation to redundancy, breach of contract, unfair dismissal, discrimination or other statutory claims whatsoever.

8.4 ACS and Client shall comply with the provisions of 6.1 to 6.3 Section F of the Statement of Work. In addition ACS shall ensure that all Advisors and Admin Staff are:

(a) suitable, skilled, experienced and competent and use the appropriate level of skill, care and diligence in the provision of the Services which shall be provided in a professional and competent manner;

(b) fully supervised at all times;

(c) aware of, and contractually obliged to comply with provisions at least as stringent as the provisions relating to confidential information, privacy and personal data as set out in Clause 11; and

(d) aware of and comply with the Client Acceptable Use Policy.

…

22. General

…

22.3 The relationship between the parties is that of independent contractors. Unless otherwise stated nothing in this Agreement shall constitute a partnership or joint venture between Client and ACS or constitute either acting as agent or commercial agent of the other for any purpose whatever and neither shall have the authority or power to bind the other or to contract in the name of or create liability against the other in any way or for any purpose save to the extent specifically referred to in Clause 3 or as otherwise expressly authorised in writing by the other from time to time.

…

26. Legal Status and TUPE

26.1 During the period of twelve (12) months preceding the expiry of this Agreement or at any other time (including, without limitation, during a period notice has been given to terminate the whole or part of this Agreement) as reasonably requested by the Client, ACS shall:

…

26.5 ACS shall not:

(a) make, promise or propose to make any material change to the terms and conditions of employment of any Staff;

(b) replace, relocate or reassign any Staff to duties unconnected with the Services;

(c) other than for a reason falling lawfully within section 98 of the Employment Rights Act 1996 terminate or give notice to terminate the employment of any member of Staff;

(d) assign or redeploy to or employ in the Services any person who is not employed in connection with the Services; or

(e) increase the level of engagement of any person employed by ACS or a replacement of the Client who is not a member of Staff so that they become wholly or mainly engaged in connection with the Services,

within the period of twelve (12) months immediately preceding the expiry or termination of this Agreement or any part of it or, if shorter, during the period of notice of termination, whether of the whole or part of the Agreement without the consent of the Client (which shall not be unreasonably withheld or delayed in the context of ACS's obligations under this Agreement to provide the Services), except such change as may be required by Law.

…

SCHEDULE 5 – Employment Matters

Part 1: Staff Standards

1. Employment, registration, permits, vetting

1.1 ACS shall ensure that all Staff:

1.1.1 have all necessary approvals, permits and/or entitlements to work in England and/or the facility and may do so legally at all times when they are employed or engaged in providing the Services;

1.1.2 are appropriately qualified to carry out their role in performing the Services; and

1.1.3 have been assessed (and are subject to ongoing assessment) for competence by reference to:

> 1.1.3.1 the procedures/activities that they have been or may be asked to undertake in their role or in the Services; and
>
> 1.1.3.2 any standards, benchmarks or assessments notified to ACS by the Client (whether prior to the Ready for Operations Milestone Data or at any time during the term of this Agreement) to apply to all Staff or stipulated categories or Staff.

2. Refusal of Admittance

2.1 The Client shall have the right to refuse admittance to, or order the removal from, any of the Facilities, or prohibit from further involvement in the provision of the Services any person employed or engaged by (or acting on behalf of) ACS whose presence and/or involvement, in the reasonable opinion of the Client, or the Authority, is likely to have a material adverse effect on the performance of the Services or is otherwise undesirable. The decision of the Client and/or

the Authority as to whether a person is to be removed or refused permission shall be final and conclusive.

3. Resources and Training

3.1 ACS shall ensure that:

3.1.1 there shall be at all times a sufficient number of Staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. To avoid doubt, this obligation shall include ensuring that there are sufficient Staff in order to meet its obligations under this Agreement to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand made in accordance with this Agreement for each of the Services; and

3.1.2 all Staff receive such training, supervision and induction as is necessary to ensure the proper performance of the Services in accordance with the Agreement.

…

8. Disciplinary Action

8.1 The Client (acting reasonably) may instruct ACS to procure that appropriate disciplinary action is taken against any member of Staff (in accordance with the terms and conditions of employment of the member of Staff concerned) that misconducts himself or is incompetent or negligent in his duties or whose presence or conduct at any of the Facilities or at work is otherwise considered by the Client (acting reasonably) to be undesirable.

9. Terms, Conditions and Policies

9.1 ACS shall ensure that it shall:

9.1.1 have in place terms and conditions of or for services for all Staff:

9.1.2 maintain personnel policies and procedures covering all relevant matters (including but not limited to staff involvement, consultation and communication, bullying and harassment, whistleblowing, compensation, training and development, sickness absence, leave and cover arrangements, lone/remote working, drug and alcohol misuse, smoking and relocation, discipline, grievances, equal opportunities, performance management and appraisal, staff and patient confidentiality health and safety and other staff-related matters covered by Law) (the Staff Handbook);

9.1.3 have in place a disciplinary procedure for the management of disciplinary issues arising from the conduct of Staff;

9.1.4 have in place appropriate policies for raising and investigating concerns regarding Staff and

9.1.5 have in place agreed policies and procedures for informing and consulting with Staff and/or recognised Staff representatives in relation to workforce and employment issues,

and in all cases ensure that the terms and the implementation of such 5 policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued forthwith on publication to the Client, and the Client agrees to keep the content of such policies and procedures confidential and only use them in 10 connection with this Agreement.

Schedule 7

15 **STATEMENT OF WORK (January 2007 – version 15)**

Section A Client Information

Campaign Brief

Management overview of the campaign and service to be supplied
The Patient Referral centre will be responsible for the receipt and processing of Diagnostic investigation referrals from approved NHS referrers in order to book Patient appointments on behalf of the client. ACS will provide approximately 100 fully trained full time equivalent advisors, Team Leaders and a PRC Manager for the duration of the contract commencing on April 2nd 2007. The service will be delivered out of Hafley Court, Rochdale. Training and other activities to meet the go live date will be started on 01st March 2007 or earlier

Client/Agilisys designated Liaison Contact Information

[name]	Project Director	[email/ telephone]	Owns overall programme through till implementation at which stage this will be handed over to the Operations Team Escalation point for both ACS and client project teams
[name]	Operations Project	[email/ telephone]	Senior user, SME on all

	Manager/Senior User		operations. Owns creation of SOW definition and primary point of contact along with Lead Systems analyst for any PRC Operational processes. Responsibility to conduct user acceptance testing with Senior Business Analyst

Post Go Live – For Ongoing Service Management

Client – Contacts List			
Contact Name	**Contact Title**	**Contact Details**	**Area(s) of responsibility**
TBC	Account Manager PRC	TBC	Principle contact for ACS. All service related requests and queries to be channelled through this contact.
TBC	PRC Manager	TBC	Own the running of the PRC and responsibility for meeting all Contractual SLA's, process improvement etc. Primary point of contact for Client regarding day to day service issues. First point of contact for and Change requests, Role would involve presenting and receiving sign off from relevant items (Client+ACS) prior to implementing any changes. Own the SOW document and

			ensures that this is updated to keep consistent with changes
TBA [name] to act as interim Escalation point	General Manager North	[phone/email]	Owner of overall service line and delivery of the same. Provides direction to the PRC operations manager and various teams and owns the service improvement plans. Involved in all service changes and provides sign off on any costs related to the service. Responsible for the ongoing management of the baseline PRC Budget and responsible for ACS internal escalations on budgetary issues.

Contract Escalation Path & Dispute Resolution

Escalation Path

i Service Related Escalation Process

1. Account Manager PRC to escalate to PRC Operations Manager
2. PRC Operations Manager to escalate to ACS General Manager
3. ACS General Manager to escalate to ACS Managing Director

5

ii Invoicing/Billing Escalation Process

1. Account Manager PRC to escalate to PRC Operations Manager
2. PRC Operations Manager to escalate to ACS General Manager
3. ACS General Manager to escalate to ACS Head of Commercial Projects
4 ACS Head of Commercial Projects to escalate to ACS Managing Director

iii Information Technology Escalation Process

1. Account Manager PRC to escalate to PRC Operations Manager
2. PRC Operations Manager to escalate to Onsite IT Support, Service Desk for resolution
ACS General Manager
3. Onsite IT Support to Escalate to IT Service Delivery Manager and ACS General Manager
4. if not resolved, escalation to Managing Director

10

Section B Contract Commercial Information

…

Pricing Information

Pricing Element	Specify Client Requirements
3.3.2 (b) Pricing Elements	Charges shall be delivered in the form of two Invoices Services – Invoice A and Recharged Costs – Invoice B. Invoice A shall include the amounts due in respect of all services provided by ACS, Excluding the '**Recharged Costs**' relating to the employment of the Advisors and any other staff under joint employment with the Client. This invoice shall be subject to VAT, save that no VAT shall be charged on the Disbursements or the training costs (which are to be charged at actual cost) unless it has been payable b ACS. The second invoice B in relation to the Recharged Costs and will not be subject to VAT. The following cost items would for part of each monthly invoice, from ACS to the client, please note that some items mentioned below are variable and will be levied as and when incurred, the listing below aims at indicating line items for each invoice. Details of costs estimated and baselined have been included as Schedule Part 1, The Charges of this document: • **Invoice A** I. **Management Fees**: Management fees towards the provisioning of the service. II. **Disbursements**: to be charged at the market rate • Telephony usages charges to be charged at market rate (Separate rates will apply for mobile and landline calls • Telephony (Dialler) licensing costs • Costs for provision of Multi Lingual service to be charged at market rate • Costs for the provision of SMS service to be charged at market rate • Postage costs • Cost of printing • Costs where applicable for physical storage of referral and other service related paper based material • Costs of storage of service materials in digital form (Softcopies) • Criminal Records Bureau checks conducted for PRC staff • Expense (at actual) incurred for provisioning the Choose and Book Registration for the PRC staff III. **Recruitment and Training Charges**: All costs incurred by ACS for Recruitment & Training of Advisors to meet agreed numbers IV. **Change Requests**: Agreed costs brought about by changes being made to the operational process and agreed as per the agreement control procedure stated in Schedule 1 of the service agreement between the client and ACS • **Invoice B**

	I. Salary and associated costs for Advisors
2.3.3 Agreed Charge out Rates	…

Section C: Services Performed

3.1 Summary of services

- Accept patient referrals from authorised authorities (the referrer) by web-based systems, secure email, post fax, hand delivery or Choose and Book
- Conduct checks on the referral for completeness – ensuring that mandatory fields have been fully completed. If necessary direct queries to the Specialist Advisor team
- Confirming receipt of the referral to the referrer; where necessary requesting any missing non-clinical information
- If unable to receive the missing information from the referral, to advise the health service body
- Where the referral is not already in electronic format, scanning the hardcopy and data capturing the content and making both available to the referrers on a pre-designated system
- Contact the patient and arrange a suitable appointment for them to attend the diagnostic investigation. Confirming the appointment in writing enclosing a copy of the appropriate centre and diagnostic investigation information pack
- If the appointment is outside the designated referral time agreed in the service levels, we will book the appointment and notify the referrer
- If practicable, remind the patient about the appointment
- If the patient does not attend the appointment, to advise the referrer and then attempt to contact the patient to make a replacement appointment
- To handle requests, by post, email, fax or telephone, from the referrers for additional copies of diagnostic reports
- To handle general enquiries by post, email, fax or telephone, from patients on tier diagnostic appointment

3.2Service Level Agreements

For the purposes of Clause 7.4.2 of the agreement between the Parties, each of the itemised elements would be considered to be separate service levels and to be the SLAs that pertain to persistent default; for example and to provide clarity, 3.1 is a service level distinct from 3.2, each of the referral activities is a separate service level as are each of the correspondence activities.

Ref Parameter	SLA
1.0 Telephony	
1.1 Calls Answered within 20 seconds	>=80%
1.2 Offered calls encountering a busy tone	<=1%
2.0 PRC Activities	
3.1 PRC Referral Activities to be completed within relevant timescale as per Table entitled PRC referral activities below	99.5%
3.2 Correspondence, as in Table entitled "Correspondence" below, to be completed to relevant time scales as set out in table entitled "PRC Referral Activities" also below	99.5%
3.3 All incoming mail, faxes and email received by 15:00 to be entered into tracking system on date of receipt.	99.5%
3.4 All outgoing mail created before 12:00 will be printed and despatched on that day. Mail created after 12:01 will be printed and despatched the following working day	99.5%

…

In relation to PRC Referral Activities only and excluding clinical triage activities

…

Clinical triage or query handling activities are not handed by ACS staff, but are included in the overall Service delivered to the referrer or NHS patient. Full detail of how this works is in Section 3.5.2 below

Section D PRC Operational Process

…

Section E Infrastructure

…

Section F Staff, Recruitment & Training

PRC STAFF

6.1.2 Team Structure Specify the desired	The team structure agreed with the client for the London region is as follows: Back Office/Admin 15 FTE "Advisors" Inbound Agents 5 FTE Outbound Agents* 25 FTE Team Leaders "PRC Management" PRC Operators Manager

	Post go live ACS may require to implement changes to the above team distribution inline with Service requirements, this will be implemented in agreement with the client. The team structure for the East region will follow the same structure. * Indicates Multiskilled Staff

Recruitment

6.2.1 Recruitment	Recruitment will be completed over an 8 week period (Initiation to Appointment) of advertising and interviews. ACS will use a number of materials to recruit the right staff for this campaign including: – Job links website – Local and National Newspapers – Recruitment agencies – Assessment Centres All PTC applicants will need to pass a Criminal Records Bureau Check before being considered for employment in the PRC. ACS will recharge as costs for the CRB check to the client. As mentioned above recruitment will be staggered according to volumes of work coming into the call centre High level Recruitment Milestones have been included as Schedule Part 4 Milestones
6.2.2 Attrition: Pls state the agreed recruitment and training budgets to factor for attrition	Industry statistics indicate a 30% - 50% annual attrition rate. ACS proposes an annual recruitment and training budget of up to 12% (on contracted numbers) to be factored to cover training costs. Any annual recruitment and training costs above the agreed attrition percentage would be borne by ACS
6.2.3	ACS produces job descriptions based on the specific role and skill level. Please see Schedule Part 3, 5 Sample Job Description for sample job descriptions

5

APPENDIX II

ACS and InHealth Written Statement of Particulars of Terms of Employment

Statement in accordance with the Employment Rights Act 1996 as amended

10

1. PARTIES

This Statement of Employment is between ……. ("You") of [*address*], and your joint employer, Agilisys Contact Services (the "Company") or any of its subsidiary companies and InHealth Netcare Limited (IHNL) (together "the Employers").

15

2. START DATE AND TYPE OF CONTRACT

2.1 Your employment will start on [*date*] which shall be the date of commencement of your period of continuous employment.

2.2 Your employment is neither temporary nor fixed term but will continue in line with the notice periods identified within the provision of this contract.

20

2.3 the first three months of your employment will be treated as a probationary period, towards the end of which there will be a review of your employment to date. The Employers reserve the right to extend this probationary period should the review be deem unsatisfactory.

25

3. JOB TITLE

You are employed as a Customer Service Advisor. You will be responsible to the Operations Manager.

30

4. REMUNERATION AND REVIEW

4.1 Your salary and all financial benefits to which you are entitled will be paid by the Company on behalf of the Employers.

4.2 Your initial basic salary will be £… per annum.

35

4.3 Basic salaries are normally reviewed once a year. Currently the salary review date is 31st July each year, although this date may be subject to change at the Employers' discretion. Any changes to your remuneration following review will be notified to you in writing.

4.4 Your annual salary will be paid in arrears directly into your bank account on 28th of each month, or earlier should 28th fall on a weekend or bank holiday.

40

4.5 …

5. OVERTIME AND ADDITIONAL PAYMENTS

You will be required to work overtime at the reasonable request of the Employers. In the event of you working overtime you will be paid for such work at your standard rate of pay. Any amendment to this arrangement will be advised to you in writing.

6. DEDUCTIONS FROM WAGES

…

7. WORKING WEEK AND HOURS

…

8. PLACE OF WORK

8.1 You are initially employed at Hafley Court, Rochdale or any other place of business that the Employers so direct. You may be required to travel on the Employers' business anywhere in the UK.

8.2 The Employers reserve the right to change your normal place of work as they, in their entire discretion, see fit although you will be given reasonable notice of any change in your place of work.

9. SCOPE OF EMPLOYMENT

During the employment you shall:

(a) devote the whole of your time, attention and skill to the business and affairs of the Employers both during business hours and during such additional hours as are necessary for the proper performance of your duties;

(b) obey the reasonable and lawful instructions of the Employers; and

(c) comply with all the Employers' rules, regulations, policies and procedures from time to time in force.

10. ANNUAL HOLIDAYS

…

11. ABSENCE FROM WORK

…

12. BENEFITS

12.1 Your pension entitlement will be solely with the Agilisys Contact Services Limited Group Pension Scheme (the "Pension Scheme"). Agilisys Contact Services will act on your behalf in all respects.

12.2 …

13. TERMINATION OF EMPLOYMENT

…

14. RESTRICTIVE COVENANTS

…

5 **15. DATA PROTECTION**

…

16. HEALTH AND SAFETY

…

17 EQUAL OPPORTUNITIES POLICY

10 …

18. POLICIES AND PROCEDURES – REFERENCE DOCUMENTS

…

19. INDIVIDUAL GRIEVANCE PROCEDURE

15 …

20. DISCIPLINARY RULES

…

21. DISCIPLINARY PROCEDURE

…

20 **22. REFERENCES**

…

23. COLLECTIVE AGREEMENTS

…

24. TERMS AND CONDITIONS OF EMPLOYMENT

25 Future changes in Terms and Conditions of Employment will be agreed between you and the Employers and notified to you by written statement, a copy of which will be given to you or otherwise brought to your notice.

25. INTERPRETATION

30 …

26. GENERAL

This statement contains the entire understanding between yourself and the Employers and supersedes any previous agreements relating to your employment by the Employers or the Company which shall be 35 deemed to have been terminated by mutual consent.

APPENDIX III

Terms of the DH Contract to which reference was made during the hearing:

5 1. INTERPRETATION AND GUIDING PRINCIPLES

1.1 This Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

1.2 The Parties acknowledge and agree that the following are *Guiding Principles* of this Agreement:

10 (a) the Services are intended to improve the provision of care to NHS patients free at the point of delivery and the clinical needs, safety and interests of the patient are at all times of overriding importance in the provision of the Services and in the performance of this Agreement;

(b) the Authority is entering into this Agreement and procuring the 15 Services in pursuance of the aims and objectives set out in the NHS Improvement Plan 2004, and, in particular, in pursuance of the policies of Plurality and 18-Week Waiting Times; and

(c) the Services are to be delivered in co-operation with Health Service Bodies.

20 1.3 …

…

3. COMMENCEMENT AND DURATION

…

25 **Service Commencement**

3.3 The Provider's [InHealth's] obligation to provide the Services shall commence on the Effective Date [6 April 2007].

…

30 7. THE SERVICES

7.1 The Provider shall perform the Services in accordance with the terms of this Agreement.

General Standards

7.2 Subject to clause 17 (*Change in Law*) the Provider shall, at its own 35 cost, be solely responsible for performing the Services (or procuring that the Services are performed) at all times:

(a) in accordance with Good Clinical Practice in respect of Diagnostic Service and Good Industry Practice in respect of Services other than Diagnostic Services;

40 (b) in a manner consistent with the Operating Manual;

(c) with full regard to the safety of all persons at the Facilities;

(d) in a manner consistent with the Authority and Referring Health Service Bodies discharging their respective statutory functions;

(e) in compliance with all Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents. For the purposes of this clause 7.2(e), 'Consents' shall include any Consents that have been obtained by the Authority or a Referring Health Body;

(f) in co-operation with local and national Health Service Bodies and relevant local government authorities;

(g) in accordance with the requirements set out in paragraphs 1 and 2 of Part 1 of Schedule 3 (*Service Requirements*); and

(h) such as to achieve and maintain the National Minimum Standards required for independent hospitals under the Care Standards Act 2000,

provided that, in the event of a conflict between any of the standards set out at clauses 7.2(a) to 7.2(h) above, the Provider shall comply with the highest standard of performance that can be derived for such conflicting standards.

…

23. TERMINATION BY THE AUTHORITY FOR PROVIDER DEFAULT

Provider Events of Default

23.1 *Provider Event of Default* means any of the following events or circumstances:

Insolvency

(a) …

Provider Breach

(b) the Provider commits a breach of any of its obligations under this Agreement and such breach materially and adversely affects the performance of the Provider's obligations under this Agreement.

…

30. ASSIGNMENT, SUBCONTRACTING AND CHANGE IN CONTROL

Assignment or Subcontracting by the Provider

30.1

(a) The Provider shall not at any time enter into, assign, transfer or subcontract a Material Subcontract without the prior written consent of the Authority to both the identity of the person with whom the Provider intends to enter into such Material Subcontract and the terms of such performance or undertaking (such consent not to be unreasonably withheld or delayed).

…

Provider Parties

30.2 The Provider shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any other Provider Party. The Provider shall, as between itself and each NHS Party, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Provider Parties. All references in this Agreement to any act, default omission, breach or negligence of the Provider shall be construed accordingly to include any such act, default, omission, breach or negligence of any Provider Party. On and around the date of this Agreement and on and around each Anniversary thereafter, the Provider shall notify in writing each NHS Subcontractor of those provisions of this Agreement with which subcontractors of the Provider are expected to comply and which are relevant to the provision of services by the NHS subcontractor.

…

NHS Patient Confidentiality

34.17 In protecting the confidentiality of Patient Information, the Provider acknowledges the four basic principles of "Protect, Inform, Provide Choice and Improve" as set out in the NHS Confidentiality Code of Practice.

34.18 In responding to the Provider's general obligations of management, recording and sharing of Patient Information and the Provider's specific contractual requirements set out at clauses 33 (*Data Protection*), 34.13, 34.14 to 34.16, Schedule 8 (*Record and Reporting Provisions*), and Schedule 24 (*IM&T Service Requirements*), the Provider shall at all times interpret its obligations to maintain and observe NHS Patient confidentiality in accordance with the common law principles if confidentiality and the confidentiality requirements of this Agreement, as well as the requirements of the Data Protection Litigation in relation to sensitive personal information.

34.19 The Provider shall develop, adopt and maintain a Patient Confidentiality Policy which is in accordance with the NHS Confidentiality Code of Practice and any subsequent guidance of NHS Patient confidentiality which may be issued by the Department of Health. Copies of the Patient Confidentiality Policy shall be made available to any NHS Patient seeking access to Patient Information.

34.20 The Provider shall ensure that each NHS Patient is made aware of each and any Patient Information disclosure that may take place in order to provide the NHS Patient with high quality care and shall introduce appropriate processes to ensure that NHS Patients have been informed of the circumstances in which their Patient Information may have been uses or shared with any other party in accordance with this Agreement.

34.21 The Provider shall undertake to ensure that every agent and Provider Subcontractor, as well as all Staff, employed or engaged by the Provider who may have access to Patient Information will be bound by a duty of confidentiality consistent with the requirements of this Agreement evidenced in writing.

34.22 With the exception of Patient Information that has been rendered anonymous in accordance with the relevant standards established by the Department of Health and which, as a consequence, may always be disclosed to the Authority or a Referring Health Service Body only, where the Provider or the Authority or a Referring Health Service Body wishes to access Patient Information held by the Provider for a purposes which is not directly concerned, or where such access is not otherwise authorised with the health care of the NHS Patient concerned then the Provider and Authority agree that the express consent of the NHS Patient to the disclosure must be sought before it is released.

34.23 The Provider and the Authority shall jointly develop, adopt and maintain an Information Sharing Protocol which will set out:

(a) the recognition by all relevant Parties of the principles set out in the NHS Confidentiality Code of Practice:

(b) the circumstances in which Patient Information may move between the Authority, the Referring Health Service Body and the Provider or may be shared between the same;

(c) the information which will be given to the NHS Patient about the proposed use of any Patient Information;

(d) the status of the Patient Information which is created or held by the Provider at any time during an Activity, and whether it is held by the Provider as a Data Controller or a Data Processor; and

(e) the anticipated flows of Patient Information which may occur between the Provider and any other party during the performances of the Agreement and the circumstances in which express NHS Patient consent must be sought to enable lawful disclosure to take place.

…

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. Definitions

…

Diagnostic Services means the Services set out in Parts 1-5 of Schedule 3 (*Service Requirements*);

…

Material Subcontract means any subcontract entered into between the Provider and a person under which such person is obliged to provide:

(a) all or part of a Diagnostic Service;

(b) equipment required for the provision of the Services and maintenance and update services in relation to such equipment;

(c) logistics support for Mobile Facilities;

(d) cleaning services;

5 (e) waste disposal services, including the disposal of radioactive materials;

(f) radiation monitoring services;

(g) infection control services;

(h) all or part of the IM&T Services;

10 …

Services means the Diagnostic Services, the services set out in Part 4 of Schedule 3 (*Service Requirements*), Schedule 8 (*Record and Reporting Provisions*), the services set out in Schedule 16 (*Governance*), the IM&T Services, and all other clinical support and non clinical services 15 to be provided and/or procured by the Provider in accordance with this Agreement.

…

SCHEDULE 3

20 SERVICE REQUIREMENTS

Part 1: General Service Delivery Requirements

1. GOOD CLINICAL/INDUSTRY PRACTICE

1.1 The Provider shall deliver the Services in accordance with Good Clinical Practice in respect of Services other than Diagnostics Services 25 and the NHS Requirements and in any event to a standard equivalent to the highest available CNST [Clinical Negligence Scheme Trust] General Clinical Risk Management Standard, in each case appropriate to the Service being delivered.

1.2 Without limitation, the Provider shall comply with the following 30 requirements:

(a) Standards for Better Health;

(b) in a manner so as to achieve and maintain the National Minimum Standards required for Independent Clinics or if applicable Independent Hospitals under the Care Standards Act 2000;

35 (c) IR(ME)R;

(d) the latest MHRA guidance/technical standards/alert notices; and

(e) PASA Centre for Evidence-based Purchasing and PASA evaluation report recommendations; and

(f) The Royal Marsden Hospital Manual of Clinical Nursing 40 Procedures (6th edition).

1.3 The Provider acknowledges that where any part of the Service is described in this Schedule 3, there shall also be an implied term that in delivering that Service, irrespective of any other standard for delivery of the Service that is specified, the Provider shall at all times deliver the Services in accordance with the highest level of clinical standards that can be derived from the standards and regulations referred to in paragraphs 1.1 and 1.2 of this Part 1 of Schedule 3

2. TIME STANDARDS

2.1 The Provider shall without prejudice to Part 2 of Schedule 6 (*Performance Monitoring Regime and Payment Mechanism*):

(a) perform the Activities required for each Referral by the Investigation Date; and

(b) complete and deliver to the Referring Clinician the Activity Output by the Report by Date

…

5. HEALTH RECORDS

5.1 The Provider shall, without prejudice to any of the provisions of Schedule 8 (*Record and Reporting Provisions*) relating to Patient Information, comply with the highest available CNST standard relating to the creation, maintenance, confidentiality, security, retention and disposal of Patient Information.

…

13. SERVICES OTHER THAN DIAGNOSTIC SERVICES

13.1 The Provider shall provide (or procure the provision of) the Services other than Diagnostic Services at the Facilities to ensure the Provider is able to provide the Diagnostic Services in accordance with the terms of this Agreement.

13.2 The Provider shall provide (or procure the provision of) the Services other than Diagnostic Services in accordance with:

(a) the highest level of standard that can be derived from the standards and regulations referred to in paragraph 1 of this Part 1;

(b) in a manner which is consistent with, and which facilitates the delivery of the Diagnostic Services to the standard required by this Agreement; and

(c) the NMS or standard acceptable to the Healthcare Commission.

Part 2: Common Services Requirements

1. DIAGNOSTIC SERVICES REQUIRED

1.1 The Provider shall provide at the request of the Referring Health Service Body:

(a) Activities as set out and further descried in Part 4 (*Clinical Contract Specifications*) of this Schedule 3;

5 (b) Activity Outputs being either:

(i) Investigations Output only; and/or

(ii) Diagnostic Reports as defined in paragraph 14.1(a) of this Part 2 of Schedule 3; or

(iii) Technical Reports as defined in paragraph 14.1(b) of this 10 Part 2 of Schedule 3.

…

3. REFERRAL METHODS

3.1 Referrals shall be made by the Referring Health Service Bodies to 15 the Provider in accordance with the referral process set out in this Part 2 of Schedule 3.

3.2 Subject to paragraph 3.3A of Part 2 of this Schedule 3, Referrals will be by any of the following methods, or any other that may be specified by the Authority from time to time:

20 (a) communicated in advance to the Provider which will then arrange a Patient Appointment directly with either the NHS Patient or the Referring Health Service Body, depending upon the local patient care pathway;

(b) Choose and Book;

25 (c) RHSB Output Referred to the Provider by the Referring Health Service Body; and

(d) Walk-In Referral

…

30 4. PATIENT REFERRAL INFORMATION

4.1 For a Referral under paragraph 3.2(a) and (b) of this Part 2 of Schedule 3, the Patient Referral Information set out in paragraph 4.3 of this Part 2 of Schedule 3 shall be sent with the Referral by the Referring Health Service Body.

35 4.2 For a referral under paragraph 3.2(c) of this Part 2 of Schedule 3, the Referring Health Service Body shall send the RHSB Output with the relevant information set out in paragraph 4.3(a)(i), (ii), (xvi) and 4.3(b) of this Part 2 of Schedule 3.

4.2A In relation to a Walk-In Referral, the Referring Health Service 40 Body shall send the relevant Patient Referral Information (as described in the local patient care pathway and/or the Walk-In Referral Form for the particular Activity or Activities required) by means of the

Referring Clinician completing the Walk-In Referral Form and the NHS Patient giving such completed Walk-In Referral Form to the Provider at a Diagnostic Walk-In Centre.

4.3 Where appropriate, Referrals shall include:

5 (a) Clinical data;

(i) type of Diagnostic Investigation requested for the NHS Patient including any special instructions where applicable eg anatomical area(s) to be investigated, clinical question(s) prompting the investigations;

10 (ii) pertinent clinical information including indications, pertinent history, and provisional diagnosis if available;

(iii) details of any previous treatment including medications given to the NHS Patient for the condition;

(iv) relevant previous investigations and reports (including
15 photocopies of results if appropriate);

(v) details of any relevant associated medical conditions (eg insulin dependent diabetes);

(vi) details of all treatments or medication that could cause a contraindication to the Diagnostic Investigation (eg warfarin,
20 metformin, metal implants etc);

(vii) details of current medications and any other known allergies (eg allergies to intravenous contrast);

(viii) LMP or pregnancy/breast feeding status of all females of child-bearing age prior to X-ray or nuclear medicine studies
25 together, if required, with a pregnancy test result to confirm negative status, in accordance with the Joint Royal College of Radiologists/College of Radiographers/National Radiological Protection Board Guidance entitled “Advice on Exposure to Ionising Radiation during Pregnancy” published in 1998 (as
30 amended supplemented or updated from time to time);

(ix) platelets, bleeding/clotting times (PT/APTT) for Diagnostic Investigations requiring biopsy, if NHS Patients are using anticoagulants;

(x) for DXA, prior fragility fractures prior bone trauma/fractures
35 or surgery, medication eg glucocorticoids, thyroid replacement, phenytoin or heparin;

(xi) anti MR contraindications;

(xii) confirmation that the NHS Patient has no known contraindications to the proposed investigation;

40 (xiii) any special needs (eg interpreter required, disabilities requiring special manual handling, carer support);

(xiv) details of community support services in place, if appropriate (eg ambulance services, carer support);

(xv) for imaging Diagnostic Investigations, previous images of the same/similar anatomical area, of no more than 3 years old, in electronic format where such previous images are available. No hard copy film will be provided;

(xvi) date and time of Referral; and

(b) Administrative data

…

4.4 If a Referral does not have all the Patient Referral Information required as set out at paragraph 4.3 of this of this Part 2 of Schedule 3 or, in the case of a Walk-In Referral, if the Walk-In Referral Form has not been duly completed, and such information is clinically necessary to produce the Activity Output or perform the Activity in accordance with this the Provider shall:

(a) contact the Referring Clinician for the required information within 24 hours of receipt of the Referral;

(b) make enquiries on the NSTS or its successor the Personal Demographic Service or the NHS Care Records Service as it becomes available in the future; and

(c) contact the NHS Patient to obtain the necessary information prior to conducting the Activity if the information cannot be provided by the Referring Clinician and is not of a clinical nature,

or, in the case of a Walk-In Referral, contact the Referring Clinician in accordance with paragraph 4.7 of this Part 2 of Schedule 3 as soon as practicable but in any event within ten (10) minutes if receipt of the Walk-In Referral Form to obtain the necessary information prior to conducting the Activity or, if the information is not of a clinical nature, ask the NHS Patient for such necessary information.

…

6. REJECTION OF REFERRAL

6.1 The Provider shall not Reject a Referral unless:

(a) the NHS Patient is within the excluded criteria set out in paragraph 2 of this Part 2 of Schedule 3;

(b) …

(c) the Referring Clinician is not approved under the Scheme Referral Protocol;

(c) acceptance of such Referral by the Provider would cause the Provider to exceed the Activity Group Price for that Contract Month provided that:

(i) this paragraph 6.1(d) shall not prevent the Provider form accepting the Referral at its discretion; and

(ii) the Provider shall use its best endeavours to make up any Cumulative Shortfall.

…

7. CONFIRMATION OF PATIENT ATTENDANCE

7.1 Other than in the case of a Walk-In Referral accepted in accordance with paragraph 3.3 of this Part 2 of Schedule 3, the Provider shall:

(a) confirm to the Referring Clinician the receipt of the Referral by no later than the next Business Day after the Receipt Date;

(b) attempt to contact all NHS Patients within 1 (one) Business Day of the Receipt Date to agree a date, time and location of the Facility for each Patient Appointment date, or confirm the date and time of the Patient Appointment in the case of an appointment booked by the Referring Clinician;

(c) if the NHS Patient cannot be contacted at the first attempt, make reasonable efforts, including not less than four (4) attempts over two (2) consecutive Business days, at different times at least two (2) hours apart to contact the NHS Patient to arrange the Patient Appointment before the end of the Maximum Period;

(d) offer the NHS Patient the choice of at least three (3) alternative times for the Patient Appointment;

(e) offer NHS Patients a choice of appointment date and time at the point of booking a Patient Appointment;

(f) if practical, where an NHS Patient requires multiple Diagnostic Investigations, arrange the Patient Appointments (or as many as is practicable) on the same day and in the same Facility;

(g) confirm in writing (where practicable) to the NHS Patient the agreed date and time for the Patient Appointment within two (2) Business Days of agreeing the date, or if was not possible to agree a date and time for the Patient Appointment contact the Referring Clinician within one (1) Business Day of contacting the NHS Patient to arrange a Longstop Investigation Date;

(h) provide to the NHS Patient at the tie of making any and all Patient Appointments for an Activity a contact telephone number which will be manned at least between the hours of 8am and 8pm during weekdays and have an answering service for all other weekday hours and also weekends to answer NHS Patient questions and receive cancellations;

(i) take all reasonable steps to minimise the number of DNAs;

(j) if practicable, having regard to the period between making the Patient Appointment and the Activity being carried out issue two (2) reminders to all NHS Patients, by telephone, email or SMS message, 72 and 24 hours before the Patient Appointment to:

(i) confirm their attendance; and

(ii) answer any outstanding questions;

(k) if an NHS Patient does not attend a Patient Appointment then the Provider shall:

(i) inform the Referring Health Service Body and Referring Clinician within 24 hours of that non attendance; and

(ii) make reasonable efforts, including not less than 3 attempts over 2 consecutive Business Days, at different times to contact the NHS Patient to rearrange the Patient Appointment as soon as possible and in any event before the end of the Maximum Period.

…

8. PROVISION OF PRACTICAL INFORMATION

8.1 The Provider shall, if appropriate, before beginning a Diagnostic Investigation, provide verbal and written information to the NHS Patient to explain:

(a) how to prepare physically, mentally and socially for the Diagnostic Investigation, including late complications and how to seek help if they occur;

(b) appropriate advice about preparations for the Activity including by way of example prescribed sedatives before the Diagnostic Investigation or discontinuance of treatment (eg beta-blockers or exercise ECG or anti-epileptic drugs for EEG (electroencephalogram)), or if they require sleep deprivation;

(c) the Diagnostic Investigation procedure/process;

(d) any preparation the NHS Patient should make before attending the Facility, including but not limited to:

(i) suitable attire;

(ii) special instructions (eg fasting, full bladder etc);

(iii) restrictions on the NHS Patient's activities after the Diagnostic Investigation (eg sedation, driving, drinking);

(e) the likely duration of the Diagnostic Investigation;

(f) the location of the Facility; and

(g) directions to the Facility (including details of car parking and public transport)

provided that in the case of a Walk-In Referral, any such information shall be provided on the Walk-In Referral Form or on other documents which the Provider ahs notified to the Referring Health Service Bodies as required to be given to NHS Patients when making a Walk-In Referral.

…

14 QUALITY REQUIREMENTS OF REPORTS: TYPE & CONTENTS

14.1 The Provider shall supply a Diagnostic Report or a Technical report as specified by the Referring Health Service Body to the Referring Clinician, and any other clinicians identified in the Referral.

(a) The Diagnostic Report as a minimum shall contain the information set out in paragraph 14.1(c) of this Part 2 of Schedule 3 and:

(i) an accurate, relevant, concise, succinct description and interpretation of the key findings;

(ii) a precise diagnosis whenever possible;

(iii) a differential diagnosis when appropriate;

(iv) suggestions for follow-up, intervention, or additional or repeat diagnostic studies, in accordance with Good Clinical Practice;

(v) any significant NHS Patient reaction or details of clinical complications;

(vi) all information, including negative information, which is pertinent to the clinical issues raised in the Referral for the Activity;

(vii) comparative information with previous examinations f the Provider has access to previous examinations; and

(viii) Any drugs or injections administered.

(b) The Technical Report as a minimum shall contain the information set out in paragraph 14.1(c) of this Part 2 of Schedule 3 together with the particular contents required under in the relevant Clinical Contract Specifications for that Activity as set out in Part 4 of this Schedule 3.

(c) General Information required for the Reports shall include:

(i) a sample image (or images) which illustrates the diagnosis unless the Referring Clinician requests a form of Report transmission which is not capable of supporting an embedded image (or images) in which case the Provider must provide clear instructions in the Report to the Referring Clinician as to the method of access such image (or Images):

(ii) full name of the NHS Patient, NHS Number, sex, ethnicity, date of birth, or other pertinent identification number;

(iii) address and postcode of the NHS Patient;

(iv) name of the Referring Clinician;

(v) name of Healthcare Professional who carried out the Activity and relevant professional qualifications;

(vi) name and qualifications of the Reporting Clinician(s);

(vii) name or type of Activity (including any applicable HRG or other clinical code for it);

(viii) date(s) of Activity including examination, dictation and transcription; and

(ix) normal ranges for laboratory and physiological measurement.

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5 SCHEDULE 6

PERFORMANCE MONITORING REGIME AND PAYMENT MECHANISM

Part 1: Referrals and Payment

2. REFERRALS

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2.2 Where the Provider is required by a Referral to arrange a Patient Appointment, the Provider shall arrange such Patient Appointment to take place on or before the end of the Maximum Period.

2.3 The Provider shall Complete each Activity by the relevant Report By Date. 15

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Part 3: Performance Management Regime

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7. PERFORMANCE INDICATORS

20 7.1 In this Agreement, subject to any amendment pursuant to paragraph 7.3 b3low, *Performance Indicators* mean any of the indicators set out in Table 1 of this Part 3 of Schedule 6.

7.2 Performance Indicators are measures of performance for the purposes of payment only and should not be construed as limiting, in any way, the standards of services set out in this Agreement (including, 25 but not limited to, as set out in Schedule 4 (*Service Requirements*).

7.3 Without prejudice to the right of the Authority to implement a Change in accordance with the provisions of Schedule 7 (*Change Procedure*), the Authority may by notice in writing and without being 30 required to comply with the provisions of Schedule 7 (*Change Procedure*), add, substitute or amend any Performance Indicator to measure performance of an other of the Provider's obligations under this Agreement, provided that the measurement of and reporting on such additional, substitute or amended Performance Indicator is not 35 materially more onerous on the Provider, taking into account all Performance Indicators as a whole.

7.4 Any additional, substitute or amended Performance Indicator shall have effect from the Contract Month following the Contract Month during which the Authority notifies the Provider in accordance with 40 paragraph 7.3 above.

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SCHEDULE 15

EMPLOYMENT MATTERS

Part 1: Staff Standards

Employment, registration, permits, vetting

1.1 The Provider shall ensure that all Staff:

(a) have all necessary approvals, permits and/or entitlements to work in England and/or the facility and may do so legally at all times when they are employed or engaged in providing the Services;

(b) are appropriately qualified to carry out their role in performing the Services and that all doctors and Healthcare Professionals employed and/or engaged in performing the Services shall:

(i) be appropriately registered with the General Medical Council, Nursing Midwifery Council, Healthcare Professionals Council (or other appropriate professional body as verified by the Provider from time to time);

(ii) (in the case of consultant Staff including honorary consultant Staff) be on the specialist register maintained by the General Medical Council for the particular specialism in which they are practising; and

(iii) have any Relevant Qualification for their role in the Services; and

(c) comply with all necessary re-registration and revalidation requirements that apply to doctors and other clinical or professional Staff;

(d) have a knowledge of and ability to converse in the English language and/or such other language as may be specified in the Clinical Contract Specification or NHS Requirements which is appropriate to their role in performing the Services including where relevant so as to be able to communicate effectively with NHS Patients and other persons relevant to or connected with the Services; and

(e) have been assessed (and are subject to ongoing assessment) for competence (including the use of appropriate competence testing tools for all clinical Staff) by reference to:

(i) the procedure/activities that they have been or may be asked to undertake in their role or in the Services (including in accordance with CNST Requirements);

(ii) any standards or benchmarks contained within the NHS Requirements;

(iii) Good Clinical Practice and Good Industry Practice; and

(iv) …

…

Resources and Training

1.3 The Provider shall ensure that:

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(a) there shall at all times be a sufficient number of Staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. To avoid doubt, this obligation shall include ensuring that there are sufficient Staff to meet its obligations under this Agreement to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand made in accordance with this Agreement for each of the services;

(b) all Staff receive such training, supervision and induction as is necessary to ensure the proper performance of the Services in accordance with this Agreement and compliance with NHS requirements; and

(c) it maintains and updates the Staffing Plan and supplies to the Authority the Monthly Staffing Plan and Variances Return in accordance with paragraph 1.1(k) of Part 4 of Schedule 8 (*Record and Reporting Provisions*).

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SCHEDULE 16

GOVERNANCE

2. Patient Safety Incidents

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7. Complaints

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