NHS Litigation Authority

LIABILITIES TO THIRD PARTIES SCHEME

MEMBERSHIP RULES

October 2014

(Revised following the coming into force of The National Health Service (Liabilities to Third Parties Scheme) (Amendment) Regulations 2014)

Please note that with effect from 5 August 2026, the following exclusions in respect of clinical trials are deleted:

- Schedule 3, paragraph 3.11.3;
- Schedule 5, paragraph 2.17.

This means that the exclusions do not apply to injury or loss occurring on or after that date.

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SCHEME CONTACTS

Please email any questions in relation to Scheme membership, contributions and excess payments to debtors@nhsla.com.

Please email any questions in relation to Scheme coverage to rpst@nhsla.com.

Any questions relating to the handling of claims under the Scheme should be referred to:

The NHS Litigation Authority
2nd Floor
151 Buckingham Palace Road
London SW1W 9SZ
Telephone: 020 7811 2700

Visit our website at http://www.nhsla.com for more information.

MEMBERSHIP RULES

1 GENERAL DESCRIPTION

1.1 The Liabilities to Third Parties Scheme was established by the Regulations (as defined below) made pursuant to Section 21 of the National Health Service and Community Care Act 1990.

1.2 The Scheme is to be administered on behalf of the Secretary of State by the Administrator.

1.3 Members shall be expected to have full knowledge of the Rules and by applying to become Members they are deemed to agree to be bound by them. Subject to the approval of the Secretary of State, these Rules may be amended from time to time by the Administrator.

1.4 These Rules and the Schedules hereto constitute the exercise by the Secretary of State of the power of determination afforded him at Regulation (as defined below) 9(1).

2 DEFINITIONS AND INTERPRETATION

2.1 **Definitions**

In these Rules, unless the context otherwise requires, the following expressions shall have the following meanings:

Administrator	means NHSLA or whosoever is appointed from time to time by the Secretary of State to administer the Scheme;
Adverse Incident	means any event resulting in a Claim;
Amendment Regulations	means the National Health Service (Liabilities to Third Parties) Amendment Regulations 2000 (S.I. 2000 No.2385), the National Health Service Liabilities Schemes Amendment Regulations 2005 (S.I. 2005 No.604), the National Health Service (Liabilities to Third Parties Scheme) (Amendment) Regulations 2014 (S.I. 2014 No.931) and any other regulations made from time to time amending the Regulations;

Applicant	shall have the meaning ascribed to it in Regulation 6(7);
Application	shall have the meaning ascribed to it in Regulation 6(7);
Board	means the board of the Administrator appointed from time to time ;
Board Member	means, in respect of a Member, any member of the board of that Member whether or not that person is an employee of that Member;
Bodily Injury	means any injury or disease compensable in law;
Claim	means any demand, however made, against a Member for monetary compensation in respect of a Qualifying Liability;
Claimant's Costs	means where an award of damages has been made against a Member by a court or tribunal, the amount of the legal and associated costs awarded to the claimant, or where legal proceedings have been compromised by the Member or settled, the Member's contribution towards any legal and associated costs of the claimant;
Claims Paid	means the basis on which benefits may be made available to Members as stated in Rule 6.4;
Compensation	means the amount awarded by a Court of Law in respect of damages (and where awarded, provisional damages but excluding exemplary, punitive or aggravated damages or damages which are liquidated under

	contract), including interest thereon;
Contribution	means the amount which a Member must pay into the Scheme to be eligible for benefits under the Scheme;
Costs and Expenses	means: (a) Claimant's Costs; or subject in all cases to the Administrator's consent thereto having been obtained by the Member, (b) Defence Costs; (c) all solicitors fees for legal representation at (i) any Coroner's Inquest or Fatal Accident Inquiry, (ii) proceedings in any Court of Summary Jurisdiction arisen out of any alleged breach of statutory duty, in connection with any event which is or may be the subject of a claim under this Scheme;
Date of Settlement	means the date on which Settlement of all aspects of the Claim occurs;
Defence Costs	means reasonable and necessary legal fees and disbursements (as approved by the Administrator in writing) including expert witness fees incurred with respect to the investigation, defence, Settlement or appeal of a Claim;
Directors' and Officers' Liability Claim	means a claim arising from a liability of a type detailed at Schedule 4

	hereto;
Eligible Body	means a body of the kind described in Regulation 3;
Employers' Liability Claim	means a claim arising from a liability of a type detailed at Schedule 2 hereto;
Excess	means the amount, including Defence Costs and Claimant's Costs, which must be paid by a Member itself in respect of each and every Claim;
Financial Loss Claim	means a claim of the kind described in paragraph 4 of Schedule 3 hereto;
General Exception	means an exception detailed at Schedule 1 hereto;
Good Samaritans Act	shall mean treatment administered at the scene of a medical emergency, accident or disaster by the Member's qualified first aiders who are not otherwise medically qualified and who are present by chance and not in connection with a Relevant Function of the Member;
IBNR Benefit	means a benefit which may be payable in respect of an IBNR Liability in accordance with Rule 6.5;
IBNR Claim	is a Claim which arises from an IBNR Liability;
IBNR Liability	means a liability of a Member which has arisen from an incident that occurred before the Membership Date and which was not known as a Claim at the Membership Date;

Income Generation	means any activity carried out by an Eligible Body as a result of any direction made by the Secretary of State under the powers afforded him by Section 7 of the Health and Medicines Act 1988;
LTPS Claim	means any Claim which, in the Administrator's opinion, is likely to be eligible for funding under the Scheme and/or has Significant Implications and/or may set a legal precedent or is a test case of a Serial Claim;
Member	means an Eligible Body which is a member of the Scheme;
Member's Payment	means the sums payable by a Member in respect of any LTPS Claim as referred to in Rules 7 and 9.3;
Membership	means the state of being a Member;
Membership Date	means the date on which Membership commences in accordance with Regulations 6.1 or 6.2 and 6.6;
Membership Year	means, in relation to an Eligible Body, any period of 12 months beginning on 1st April during any part of which that Eligible Body is a Member of the Scheme;
NHSLA	means the Special Health Authority established pursuant to the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 by the Secretary of State under the title National Health Service Litigation Authority, to

	administer the Scheme and shall include where appropriate the Board and any committee or sub-committee of the Board and the officers of the National Health Service Litigation Authority;
Personal Accident Claim	means a claim arising from liability detailed at Schedule 6 hereto;
Personal Injury	means Bodily Injury and wrongful arrest, detention, imprisonment and malicious prosecution;
Persons	includes companies, statutory bodies, partnerships, firms, individuals, government departments and other administrative organisations and any other body of persons, whether incorporated or unincorporated;
Pollution Liability Claim	means a claim of the kind described at sub-paragraph 3.9 of Schedule 3 hereto;
Premises	means all premises owned, occupied or used by the Member in the United Kingdom;
Products Supplied	means goods including labels and containers and packaging: (a) on which work has been completed by or on behalf of the Member at the Member's normal place of business or that of the party who carried out the work on the behalf of the Member; or (b) which has been handled, stored, sold, supplied, transported or financed by the

	Member and which at the time of the event giving rise to a Claim are not under the custody or control of the Member or any Relevant Person;
Professional Indemnity Claim	means a claim arising from a liability of a type detailed at Schedule 5 hereto;
Property	means material property;
Public and Products Liability Claim	means a claim arising from a liability of a type detailed at Schedule 3 hereto;
Qualifying Liability	means, in respect of a Member, a liability which falls within the definition thereof at Regulation 4(2), and which is either an Employers' Liability Claim, a Public and Products Liability Claim, a Directors' and Officers' Liability Claim, a Professional Indemnity Claim or a Personal Accident Claim, save where in each case a General Exception applies;
Regulations	mean the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999 (S.I. 1999 No. 873) (as amended),
Relevant Function	shall have the meaning ascribed to it in Regulation 1(2);
Relevant Person	means, in respect of a Member, a person employed or engaged by that Member, and shall be taken to include: (a) a person under a contract of service or apprenticeship with

the Member;

(b) a labour master or person supplied by a labour master;

(c) a person employed by labour - only sub-contractors;

(d) a person hired to or borrowed by the Member including volunteer drivers in connection with community bus schemes;

(e) a person being a prospective driver whilst driving;

(f) a person undertaking study or work experience;

(g) a person supplied under any youth training or similar government scheme while working for the Member in connection with the Relevant Function;

(h) a director or trustee;

(i) an authorised voluntary worker; and/or

(j) committee members or review panel members.

Risk Management means the management of risk with a view to minimising both the occurrence of Adverse Incidents and of Claims and the amount of financial liability arising therefrom;

Rules means the Rules herein set out as varied from time to time in accordance with Rule 1;

Run Off Benefit means, subject to the Administrator's absolute discretion, an entitlement to a benefit which may be purchased by former Members in respect of

	Claims reported during the period of Membership but which are not settled within 30 days of the termination of their Membership;
Scheme	means the Liabilities to Third Parties Scheme as established by Regulation 2;
Secretary of State	means the Secretary of State for Health;
Serial Claim	means a series of Claims which, in the opinion of the Administrator, arise from common causes and which have a common identity or nature;
Settlement	means the amount of damages agreed pursuant to a legally binding agreement between a claimant and a Member in respect of a Claim (whether with or without admission of liability) or the amount of damages awarded in respect of a Claim pursuant to an order of a court or other tribunal, whether the payment of such damages will be made by a single payment or is a Periodical Payment and "settled" shall be construed accordingly;
Significant Implications	means, in relation to a Claim, any Claim which is novel, contentious or repercussive;
Territorial Limits	means: (a) anywhere within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man, including designated areas of the continental shelf

surrounding Great Britain and foreign sections of cross-boundary petroleum fields as defined in the Employment (Continental Shelf) Act 1978;

(b) elsewhere in the world in connection with the activities of any Relevant Person provided such Relevant Person is normally resident in Great Britain, Northern Ireland, the Channel Islands or the Isle of Man and is not outside such countries for more than six months in any one Membership Year; and/or

(c) anywhere in the world in connection with the Products Supplied at or from the Premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

Total Payment means the total payment calculated in accordance with Rule 9.3; and

Year means the period from 1 April in any calendar year through until 31 March the following calendar year.

2.2 **Interpretation**

2.2.1 All terms defined in the Regulations which are used in these Rules shall bear the same meaning as in the Regulations unless the context requires otherwise and in the event of any conflict or inconsistency between the Regulations and the Rules, the Regulations shall prevail.

2.2.2 In these Rules, a reference to a numbered rule is a reference to the Rule which bears that number in these Rules and a reference to a numbered regulation is a reference to a Regulation which bears that number in the Regulations.

2.2.3 Clause headings and the index are for ease of reference only and are not to affect the interpretation of these Rules.

2.2.4 Words denoting the singular include the plural and vice-versa.

3 COVERAGE OF THE SCHEME

3.1 Subject to the terms of the Regulations (as amended or varied from time to time), the liabilities to which the Scheme applies are any liabilities to which a Member is subject in respect of loss, damage or injury which:

3.1.1 arises out of the carrying out of any Relevant Function of that Member;

3.1.2 is a Qualifying Liability; and

3.1.3 is not a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended) the National Health Service (Existing Liabilities Scheme) Regulations 1996 (as amended) or a qualifying expense for the purposes of the National Health Service (Property Expenses Scheme) Regulations 1999 (as amended).

3.2 Any loss, damage or injury incurred on or after 1 April 1999 but before 1 May 2014 which did not arise out of the Member's relevant function as defined in Regulation 1(2) at that time but which would have done so had the change to the definition effected by the Amendment Regulations been made prior to the loss, damage or injury occurring, is to be treated as loss, damage or injury arising out the Member's Relevant Function as specified at Rule 3.1.1 above.

4 MEMBERSHIP OF THE SCHEME

4.1 Eligibility for Membership

A body is eligible to participate in the Scheme if it is a body of the kind described in Regulation 3. The Administrator shall, having regard to the information provided by the Applicant, and to such other factors regarded by the Administrator as material, determine whether or not an Applicant should be admitted as a Member.

4.2 Application Forms

The Administrator shall have the power to prescribe a form or forms of application to be delivered to the Administrator by Applicants and to require certain information on the Applicant's activity profile in accordance with Regulation 6(4). All Applications shall be made in accordance with Regulation 6(3).

4.3 Date of Commencement of Membership

Membership shall commence in accordance with the provisions of Regulation 6.

4.4 **Period of Membership**

A Member may only terminate its participation in the Scheme in accordance with the provisions of Regulation 7 (1).

5 PROVISION OF INFORMATION

5.1 **General**

5.1.1 Members will be required to provide (at their own expense) such information regarding their activities to the Administrator as may be determined from time to time by the Administrator, which information shall include, without limitation, the information referred to in these Rules and in Regulations 6(4) and 10. Members acknowledge and agree that any and all information and data (howsoever held) provided by them to the Administrator may be disclosed without restriction or conditions by the Administrator to the Secretary of State and his respective officers, agents, employees and sub-contractors. For the avoidance of doubt, any such information provided by Members shall be and remain the property of the Administrator.

5.1.2 Cover Voidable

(a) Cover for a Member under the Scheme shall be voidable (in whole or in part) at the Administrator's discretion in the event of misrepresentation, mis-description or non-disclosure in any material fact.

(b) A material fact is any fact which might influence the Administrator in deciding whether or not to grant cover under the Scheme, what the terms should be or what Contribution to charge.

5.1.3 Fraud

If any claim made by the Member or anyone acting on behalf of the Member to obtain any Scheme Benefit shall be fraudulent or intentionally exaggerated or if any false declaration or statement shall be made in support thereof no compensation shall be payable hereunder.

5.2 **Information Contained in Application Forms**

If there is any material change in the details and information contained in the application form, Members are required to notify the Administrator immediately and the Administrator reserves the right, in its absolute discretion, to amend the amount of the Contributions from Members and/or withhold any benefits which the Administrator might otherwise have provided.

5.3 **Confidentiality of Statistical Data**

The Administrator may ask Members to provide certain statistical information that will enable it to develop the Contribution setting process and to identify trends in litigation. Whilst this information will be disseminated on a regular, anonymous basis to all Members to assist in their Risk Management processes, statistical information on individual Members will only be available to that Member and the Administrator. The Administrator shall use all reasonable endeavours not to disclose such information to third parties without the prior written consent of that Member unless such information is required to be disclosed by law or any regulatory requirement or by any regulatory authority.

5.4 **Claim Reports**

Members will be required to meet the reporting frequency and information requirements as defined and published from time to time by the Administrator.[1]

6 BENEFITS PROVIDED BY THE SCHEME

6.1 **Discretion of the Administrator**

All benefits available to Members under the Scheme shall be given at the sole and absolute discretion of the Administrator on behalf of the Secretary of State whose decision in these matters shall be final and binding. These Rules shall not, under any circumstances, be construed to imply that any contract of insurance exists between the Member and the Administrator or that the benefits available under the Scheme are not discretionary. Subject to the total funds available to the Scheme and to the discretion of the Administrator, there shall be no limit to the financial benefits available under the Scheme in any Year.

6.2 **Benefits**

The Administrator may, subject to Rule 6.1, provide funds to make payments permitted under Regulation 9 in a sum not exceeding a Total Payment in respect of any LTPS Claim.

6.3 **Limit to Benefits**

The Administrator may refuse to provide financial benefits to any Member in accordance with the provisions of Regulation 9(2), 9(2A) and/or 9(2B). In the event that the Administrator refuses to provide benefits in these circumstances, the Member shall have the right of appeal to the Secretary of State within 30 days of the decision of the Administrator for a review of the

[1] In general, it is intended that no significant extra burden will be placed on Members and that the information collected should be no more than that which a Member conforming to good practice would have readily available.

Administrator's decision, but in all circumstances the decision of the Secretary of State shall be final and binding.

6.4 **Claims Paid Basis**

Subject to Rules 6.1 and 6.3, benefits will be provided under the Scheme on a Claims Paid basis. This means that in order to receive benefits in respect of a Claim, the Member must have maintained continuous Membership between the following dates (inclusive):

(a) the date of occurrence of the Adverse Incident which subsequently gives rise to the Claim; and

(b) the Date of Settlement unless the Member is eligible for the IBNR Benefit and/or Run Off Benefit in which case the conditions specified in Rules 6.5 and 6.6 shall apply.

6.5 **Incurred But Not Reported (IBNR) Benefit**

6.5.1 Benefits in respect of an IBNR Claim may be available subject to additional contributions and in the absolute discretion of the Administrator. This IBNR Benefit may be available in respect of an Employers' Liability Claim, a Public and Products Liability Claim and a Professional Indemnity Claim in cases where Members have previously held "claims made" insurance policies.

6.5.2 The Scheme will cover the Member against an Employers' Liability Claim, a Public and Products Liability Claim and a Professional Indemnity Claim which happened or was caused prior to the Member's becoming a Member of the Scheme and in respect of which a Claim is first made in writing against the Member during a Membership Year and on or after the Membership Date, and for which alternative insurance is not available.

6.6 **Run Off Benefit for Former Members**

If a Member ceases for any reason to be a Member, no benefits shall be available to that former Member for Claims reported during the period of Membership but which are not settled within 30 days of the date of termination of the Membership, unless a Run Off Benefit is purchased by the former Member (or an agreement is made between the Member and the Administrator pursuant to Regulation 9 (1A)). This benefit may be made available to a former Member under such terms and conditions as the Administrator may, in its absolute discretion, determine at the date the Member ceases to be a Member.

6.7 **Contribution with Insurance Policies**

If at the time of the happening of any loss, destruction or damage or liability covered by this Scheme there shall be in existence any insurance of any

nature providing indemnity to the Member for such loss, destruction or damage or liability, whether effected by the Member or not, then the liability of the Scheme shall be limited to a contribution not exceeding that of the insurer or insurers.

6.8 **Rights of the Administrator**

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Scheme the Administrator and every person authorised by the Administrator may without thereby incurring any liability and without diminishing the right of the Administrator to rely upon any conditions of this Scheme, enter, take or keep possession of the building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to them any of the property and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the Member to the Administrator so to do. If the Member or anyone acting on behalf of the Member does not comply with the requirements of the Administrator, or shall hinder or obstruct the Administrator in doing any of the above-mentioned acts, then all benefits under this Scheme shall be forfeited. The Member shall not in any case be entitled to abandon any property to the Administrator whether or not possession has been taken by the Administrator.

6.9 **Subrogation**

Any Member under this Scheme shall at the request and expense of the Administrator do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Administrator for the purpose of enforcing any rights and remedies of or of obtaining relief or indemnity from any other parties to which the Administrator shall be or would become entitled or subrogated upon its paying for or making good any loss, destruction or damage, accident or injury under this Scheme whether such acts and things shall be or become necessary or required before or after indemnification by the Administrator. In no event should any Member waive such rights of subrogation against other parties, unless by specific agreement with the Administrator.

6.10 **Statutory Requirements, Maintenance and Reasonable Precautions**

The Member shall:

6.10.1 maintain the Premises, medical and all other machinery, plant and equipment in a satisfactory state of repair;

6.10.2 take all reasonable precautions for the safety of the property; and

6.10.3 take all reasonable precautions to prevent loss, destruction, damage, accident or injury.

7 EXCESS LEVELS

Excess Levels Year on Year

7.1. The Scheme will not be liable for the amount of the Excess (or any lesser amount for which a Claim may be settled) shown below in respect of each and every event resulting in a Claim.

Employers' Liability Claim	£10,000
Public and Products Liability Claim (excluding Pollution Liability Claims)	£3,000
Pollution Liability Claim	£10,000
Directors' and Officers' Liability Claim	Nil
Professional Indemnity Claim	£3,000
Personal Accident Claim	Nil

7.2. The Excess applicable to a Claim will be the higher of the Excess applicable in the Membership Year the Claim is notified to the Member and the Excess applicable in the Membership Year in which the Claim is settled.

7.3. The Administrator may change the Excesses, such changes to be notified to Members not later than 31 October in any Year to become effective from 1 April the following Year.

7.4. The Administrator shall have full discretion in determining any Excess level issues arising from a multi-party situation.

8 CONTRIBUTIONS

8.1 Contribution Assessment

The Administrator shall determine the Contribution to be paid by Members having regard to the matters referred to in Regulation 8(2). The Administrator may, in the light of differing and/or special needs of an individual Member or group of Members, create different categories of Member (as defined by the Administrator). The Administrator may then, in its absolute discretion, determine different rates or different periods of Contribution such determination to be final and binding on the Members.

8.2 Anniversary Assessments

The amount of Members' Contributions will be notified to them in accordance with Regulation 8(3).

8.3 **Payment Terms**

Contributions under the Scheme should be paid into the nominated bank account of the Administrator, as notified to the Members from time to time, in accordance with Regulation 8(6). Subject to the provisions of Regulation 8(6), Members shall be offered Contribution payment terms on an annual basis in advance or such other basis as the Administrator may determine from time to time.

8.4 **Excess Funds**

8.4.1 If, in the view of the Administrator, excess funds have been collected in the previous Year, such funds (or a proportion of those funds) shall be used to offset the Contributions to be paid by Members in a following Year.[2] No monies shall be returned to Members or former Members.

8.4.2 **Non Payment of Contributions**

8.4.3 The provisions of Regulation 7(3) will apply where any payment which a Member is liable to pay is in arrears.

9 CLAIMS MANAGEMENT

9.1 **Claims Reporting Procedures**

9.1.1 Forthwith upon notification to a Member of any Claim which appears likely to be a LTPS Claim the Member shall notify the Administrator and supply all appropriate documentation to enable the Administrator to determine, in its absolute discretion, whether or not the Claim is likely to be a LTPS Claim. If the Claim is, in the Administrator's opinion, unlikely to be a LTPS Claim then the Member shall be responsible for handling the same subject to any protocol or guideline issued from time to time by the Administrator. If the Claim is, in the Administrator's opinion, likely to be a LTPS Claim then the Administrator shall, unless it determines otherwise in its absolute discretion in respect of any Claim or Claims, conduct the Claim as referred to in Rule 9.2.

9.1.2 From time to time, the Administrator shall publish protocols and guidelines for the manner of reporting Claims, each of which shall be incorporated in and form part of these Rules. The nature of the information required may vary according to the expected value of the Claim and the applicable Excess.

9.2 **LTPS Claims**

[2] i.e. Excess funds from Year 1 will be credited no earlier than Year 3. This is to allow Year 1 accounts to be audited. Members will be notified of the amount capable of being offset with the Contribution assessment for Year 3.

Members shall co-operate with the Administrator and shall provide to the Administrator all such assistance and information which it may require in respect of the conduct of any Claim. Without prejudice to the foregoing, the Administrator shall have the right, on behalf of the Member, to exercise any right which arises whether by virtue of a contract or otherwise in connection with a Qualifying Liability, including in particular, the right to select, instruct and de-instruct legal and other advisers and agree the terms of their retainer, and any right to raise claims or defences, and/or to bring proceedings. Such rights apply in respect of all LTPS Claims notified at any time and from time to time to the Administrator. In addition, and at no charge, the Member shall give the Administrator full access to all documents, records, computer databases or other property, to premises and to Relevant Persons.

9.3 **Payment in respect of LTPS Claims**

9.3.1 The Administrator shall keep records regarding the costs of individual LTPS Claims which can be taken into account when determining the contribution payable by the Member towards the Settlement, Claimant's Costs and Defence Costs and any other costs or payments in respect of the LTPS Claim and the amount of the Total Payment in respect of such LTPS Claim.

9.3.2 Payment in respect of a Qualifying Liability shall, unless the Administrator otherwise directs, be made by the Member forthwith to whomsoever the Administrator shall direct on notification. The Member shall receive reimbursement in respect of such payment net of the Member's contribution towards the amount of such payment as determined by the Administrator in its absolute discretion but including, without limitation, the amount referred to as payable by the Member under Rule 7.

9.3.3 In determining the Member's Payment, the Administrator shall take into account whether the Member has complied with the Regulations and the Rules and in particular, but without limitation, Rule 9.2. Where more than one Member is liable in respect of a LTPS Claim the Administrator shall apportion the amount of such contribution in whatever manner it may decide. The Administrator shall also take account of sums paid as specified under Rule 9.5.

9.3.4 If the Administrator so decides in its absolute discretion in respect of any Claim or Claims, any payment in respect of a Qualifying Liability shall be made direct to third parties as aforesaid by the Administrator. The Member shall make the Member's Payment to the Administrator or as directed by the Administrator.

9.4 **Claims Settled Below the Excess**

Claims (including Claimant's Costs and Defence Costs) settled below the amount of the Excess are a matter for the Member, subject only to the reporting requirements published by the Administrator from time to time.

9.5 **Legal Advice**

9.5.1 As referred to in Rule 9.2, the Administrator shall appoint on its own behalf, and on behalf of any Member, legal and other advisors selected by the Administrator either generally to act in respect of LTPS Claims or in relation to particular LTPS Claims or categories of LTPS Claims.

9.5.2 In the event that the Administrator shall appoint any legal advisor as referred to above, then the Administrator shall be entitled to pay such legal advisor on whatever terms it considers appropriate and to allocate and apportion the amount of any sums so paid between such LTPS Members as it considers appropriate. Such sums so allocated will be taken into account in determining the Member's Payment under Rule 9.3.

9.6 **Claims Management Dispute Procedure**

If there is a dispute on the handling of a Claim between the Member and the Administrator then subject in all cases to the overriding discretion of the Administrator, the benefits available to that Member may be affected, as follows:

9.6.1 where the Member wishes to settle but the Administrator recommends defending, no benefits will be available;

9.6.2 where the Member wishes to defend but the Administrator recommends that the Claim is settled by agreement,

(a) the benefits available will be no more than those accruing from the amount recommended by the Administrator to be offered to settle the Claim, and

(b) should the Member continue to pursue the defence of the Claim and succeed, the Member will be eligible for reimbursement of the unrecovered Defence Costs up to the value of, but not exceeding those benefits available under Rule 9.6.2(a).

9.7 **Claims Management Appeals Procedure**

In the event that a Member disagrees with the view of an employee, agent or sub-contractor of the Administrator in the management of a Claim, the Member shall have the right of appeal as follows: (a) in the first instance to the Director of Claims or Technical Claims Director of the Administrator; (b) in the event of continued disagreement to the Chief Executive of the

Administrator; (c) in the event of continued disagreement the dispute shall be referred to mediation.

9.8 **Settlements**

Where a Claim has or is due to settle, Members and the Administrator should consider the overall value for money to the public sector (in accordance with Department of Health guidance issued from time to time) in proposing a settlement. The use of a periodical payment under a proposed settlement shall, however, be subject to the final approval of NHSLA and/or the Department of Health (as appropriate).

9.9 **Mitigation**

Members agree to do all things reasonably in their power to eliminate or mitigate any cost, expense or liability in respect of any Claim. In particular, any monies recovered from any other source in respect of a Claim shall be set-off against any benefits available under the Scheme, unless agreed otherwise by the Administrator beforehand.

10 SET-OFF AND INSOLVENCY

10.1 **Set-Off**

The Administrator may set-off any amount due from a Member or former Member against any amount due to or agreed to be paid to such Member or former Member.

10.2 **Insolvency of a Member**

In the event of the winding up of a Member or the taking of other analogous insolvency proceedings in relation to a Member:

(a) no further benefits will be available to that Member; and

(b) its Membership shall terminate forthwith.

For the avoidance of doubt should a Member be placed into administration under the Trust Special Administration Regime (TSAR) as administered by either the Department of Health or Monitor then this shall not be considered to be an event of winding up or analogous to insolvency proceedings in respect of that Member's continued Membership of the Scheme for the purposes of this Rule 11.

However the statutory dissolution of a Member following the completion of a TSAR process or an acquisition or merger transaction shall be considered to be analogous to winding up proceedings.

11 EXPULSION FROM MEMBERSHIP

11.1 **Right of Expulsion**

Without prejudice to Regulation 7(3), upon giving not less than 28 days' notice to the Member, the Administrator shall have the right to expel any Member from Membership whose conduct or continued Membership is, in the opinion of the Administrator, detrimental to the efficient administration of the Scheme or to the interests of the other Members. Faults which may be considered to give rise to expulsion from the Scheme may include (without limitation) a material breach of these Rules. Such expulsion shall not affect any outstanding obligations of the Member to the Scheme.

The date of termination of Membership shall be the date on which the notice expires but during the period of such notice their Membership shall continue in accordance with these Rules.

11.2 **Right of Appeal against Expulsion**

A Member under notice of expulsion shall have the right to appeal to the Board within 14 days of the date of such notice and thereafter to the Secretary of State within 14 days of the decision of the Board, against the decision to expel the Member. In all circumstances, the decision of the Secretary of State shall be final and binding.

11.3 **Outstanding Claims**

In the event of the expulsion of a Member under Rule 11.1, for the avoidance of any doubt, no financial liability shall rest with the Administrator for outstanding Claims which have not been settled, future payments due under Periodic Payment Orders (PPOs) after expulsion or potential Claims made against the Member, whether notified to the Administrator or not, or any unexpired Contributions to the Scheme unless the Administrator determines otherwise.

12 TERMINATION OF MEMBERSHIP

If a Member ceases to be an Eligible Body, the Administrator may terminate that Member's participation in the Scheme with immediate effect.

13 GUIDANCE ON SPECIFIC ISSUES

The Administrator shall, from time to time, publish guidance on specific issues concerning the qualification for and the extent of benefits available under the Scheme.

14 GENERAL

14.1 **Notices**

14.1.1 A notice to be served on the Administrator may be served by sending the notice by recorded delivery addressed to the Administrator at 151 Buckingham Palace Road, London SW1W 9SZ, or by personal delivery to that address.

14.1.2 A notice to be served on a Member may be served by sending the notice by recorded delivery addressed to the Member at the address last notified to the Administrator or by personal delivery to that address.

14.1.3 Any such notice shall be deemed to have been served, if sent by post, on the day after it was posted or if delivered personally, on the date of delivery.

14.2 **Non-Disclosure and Misrepresentation**

The Administrator shall be entitled to withdraw all benefits in the event of non-disclosure of information or misrepresentation by a Member at any time unless the Member is able to establish to the satisfaction of the Administrator that such non-disclosure or misrepresentation was free from any fraudulent conduct or intent to deceive. In such circumstances, the Contribution payable by the Member and the Excess applicable to that Member may be adjusted at the absolute discretion of the Administrator to those which would have applied had such circumstances been disclosed.

14.3 **Liaison and Co-operation**

Members shall fully co-operate and liaise with the Administrator and take such steps as the Administrator may request in connection with, inter alia, the administration of the Scheme including, without limitation, by responding promptly to any requests for information.

15 GOVERNING LAW

These Rules shall be governed by and construed in accordance with English Law.

SCHEDULE 1
GENERAL EXCEPTIONS TO QUALIFYING LIABILITIES

1 Any claim brought by a Member shall not be a Qualifying Liability for the purposes of the Scheme to the extent that such claim arises from:

1.1 death or disablement, loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

1.1.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

1.1.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,

1.1.3 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power,

1.1.4 pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds,

1.1.5 (for the purposes of a Public and Products Liability Claim only) the Member's activities while in or on that part of any commercial or military airport or airfield provided for

(a) the take-off or landing of aircraft or the movement of aircraft on the ground, or

(b) aircraft parking including any associated service roads refuelling areas ground equipment parking areas aprons maintenance areas and hangars,

1.1.6 an incident which occurred prior to the Member acquiring shadow Trust or full Trust status (save in any circumstance where a Member has taken over any Qualifying Liabilities of a Trust which was previously a Member),

provided that the General Exceptions at sub-paragraphs 1.1.1, 1.1.2, 1.1.3 and 1.1.4 shall not apply to an Employers' Liability Claim;

1.2 any liability to which a Member is subject in respect of Bodily Injury which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended) or the National Health Service (Existing Liabilities Scheme) Regulations 1996 (as amended); and

1.3 Income Generation activities which are advised from time to time by the Administrator to the Member as being excluded, (this exception does not apply to an Employers' Liability Claim or a Directors' and Officers' Liability Claim).

2 Members are required to make full declarations of Income Generation activities to the Administrator. Activities which have not been declared will be excluded until such time as they have been declared by the Member and a decision on Scheme cover for these Activities made by the Administrator. Any failure to declare any such Income Generation activity (including, notwithstanding paragraph 1.3 above, in the event of an Employers' Liability Claim or a Directors' and Officers' Liability Claim) shall (in the Administrator's discretion) render the cover for the Member concerned voidable in whole or in part.

SCHEDULE 2
EMPLOYERS' LIABILITY SCHEME

Qualifying Liability:

1 **Definition**

In the event of Bodily Injury sustained by any Relevant Person arising out of and in the course of his or her employment or engagement by the Member in the Relevant Function and caused within the Territorial Limits during the Membership Year and on or after the Membership Date, the Employers' Liability Claim will be:

1.1 legal liability to such Relevant Person for Compensation; and

1.2 Costs and Expenses.

2 **Extensions to Schedule 2**

For the purposes of these Rules, an Employers' Liability Claim will include the following:

2.1 Legal Expenses arising from Health and Safety Legislation

2.1.1 In the event of:

(a) any act or omission or alleged act or omission leading to criminal proceedings brought in respect of a breach of the Health and Safety at Work Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or similar safety legislation of Great Britain, Northern Ireland, the Isle of Man or the Channel Islands; or

(b) an incident which results in an Inquiry ordered under the Health and Safety Inquiries (Procedure) Regulations 1975,

which arises in connection with the Relevant Function and which occurs during the Membership Year and on or after the Membership Date within the Territorial Limits, and at the discretion of the Administrator the Scheme will provide indemnity against legal fees and expenses (as approved by the Administrator, in writing) incurred in representing the Member in such proceedings including appeals against results of such proceedings.

2.1.2 This indemnity will not apply

(a) in respect of fines or penalties of any kind;

(b) to proceedings relating to the health and safety of any person other than a Relevant Person;

(c) to proceedings consequent upon a deliberate act or omission by the Member; or

(d) to persons other than the Member or Relevant Persons.

2.2 Unsatisfied Court Judgements

In the event of a judgement for damages being obtained by any Relevant Person in respect of Bodily Injury to that Relevant Person caused during any Membership Year and on or after the Membership Date, arising out of and in the course of employment by the Member in the Relevant Function against any company or individual operating from premises within the Territorial Limits in any court situated in those countries and remaining unsatisfied in whole or in part six months after the date of such judgement, the Scheme will at the request of the Member indemnify the Relevant Person or the personal representatives of the Relevant Person up to the amount of any such damages and any awarded costs to the extent that they remain unsatisfied,

provided that

2.2.1 there is no appeal outstanding; and

2.2.2 if any payment is made hereunder, the Relevant Person or the personal representatives of the Relevant Person shall assign the judgement to the Scheme.

2.3 Indemnity to Other Persons

If the Member so requests the Scheme will indemnify:

2.3.1 any Relevant Person;

2.3.2 any Relevant Person's personal representative in respect of legal liability incurred;

2.3.3 any principal for whom the Member is carrying out a contract for the performance of work but only to the extent required by the contract conditions and is considered reasonable in the view of the Administrator;

2.3.4 the owners of the plant hired in by the Member but only to the extent required by the hiring conditions and provided always that the terms upon which the Member hires the plant are no more onerous than the standard form of contract of the Contractors' Plant Association or Hire Association of Europe;

2.3.5 the officers, committees and members of organisations established in order to provide canteen or sports and social facilities or educational or welfare services primarily for the benefit of Relevant Persons; and/or

2.3.6 persons providing first aid, ambulance, fire or security services primarily in connection with the Premises,

against legal liability in respect of which the Member would have been entitled to Indemnity under this Schedule 2 if the claim has been made against the Member.

3 **Exceptions to Schedule 2**

3.1 An Employers' Liability Claim will not include:

3.1.1 any Bodily Injury sustained by any Relevant Person

(a) carried in or on a vehicle; or

(b) entering or getting on to or alighting from a vehicle,

where such Bodily Injury is caused by or arises out of the use by the Member of a vehicle on the road; or

3.1.2 any liability in respect of any Claim arising in connection with work undertaken in or on (including travel to, from and within) any offshore accommodation, exploration, drilling or production rig installation or offshore support vessel.

3.2 For the purposes of the exclusion set out in sub-paragraph 3.1.1, the expressions "road", "use" and "vehicle" have the same meanings as in the Road Traffic Act 1988 or similar subsequent legislation.

3.3 Any Member requiring cover in respect of the liabilities specified in sub-paragraph 3.1.2 may make a specific representation to the Administrator who retains the discretion to extend Scheme cover in return for the payment of an additional contribution.

SCHEDULE 3
PUBLIC AND PRODUCTS LIABILITY CLAIM

Qualifying Liability:

1 **Definition**

In the event of accidental:

1.1 Personal Injury; or

1.2 loss of or damage to Property; or

1.3 obstruction, trespass, nuisance or interference with any right of way, air, light, water or other easement or loss of amenities,

which arise in connection with the Relevant Function and which occur during the Membership Year and on or after the Membership Date and within the Territorial Limits, the Public and Products Liability Claim will be legal liability for Compensation, Costs and Expenses.

2 **Extensions to Schedule 3**

For the purposes of these Rules, a Public and Products Liability Claim (provided that in respect of sub-paragraphs 2.2 to 2.15 inclusive the circumstances arise in connection with the Relevant Function and that the event giving rise to legal liability occurs during the Membership Year and on or after the Membership Date and within the Territorial Limits) may include:

2.1 Indemnity to Other Persons

If the Member so requests the Scheme will indemnify:

2.1.1 any Relevant Person;

2.1.2 any Relevant Person's personal representative in respect of legal liability incurred;

2.1.3 any principal for whom the Member is carrying out a contract for the performance of work but only to the extent required by the contract conditions and is considered reasonable in the view of the Administrator;

2.1.4 the owners of plant hired in by the Member but only to the extent required by the hiring conditions and provided always that the terms upon which the Member hires the plant are no more onerous than the standard form of contract of the Contractors' Plant Association or Hire Association of Europe;

2.1.5 the officers, committees and members of organisations established in order to provide canteen or sports and social facilities or educational or welfare services primarily for the benefit of any Relevant Person; and/or

2.1.6 persons providing first aid, ambulance, or security services primarily in connection with the Premises,

against legal liability in respect of which the Member would have been entitled to indemnity under this Schedule 3 if the claim had been made against the Member;

2.2 Legal Expenses arising from Health and Safety Legislation

2.2.1 In the event of:

(a) any act or omission or alleged act or omission leading to criminal proceedings brought in respect of the Health and Safety at Work Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or similar safety legislation of Great Britain, Northern Ireland, the Isle of Man or the Channel Islands, or

(b) an incident which results in an Inquiry ordered under the Health and Safety Inquiries (Procedure) Regulations 1975,

which arises in connection with the Relevant Function and which occurs during the Membership Year and on or after the Membership Date and within the Territorial Limits, the Scheme will provide indemnity against legal fees and expenses (as approved by the Administrator in writing) incurred in representing the Member in such proceedings including appeals against the results of such proceedings.

2.2.2 This indemnity will not apply:

(a) in respect of fines or penalties of any kind;

(b) to proceedings relating to the health and safety of any Relevant Person;

(c) to proceedings consequent upon a deliberate act or omission by the Member; or

(d) to persons other than the Member or any Relevant Person.

2.3 Defective Premises Act

Where the Member is legally liable for accidental Bodily Injury or loss of or damage to Property by virtue of the Defective Premises Act 1972 or the Defective Premises (Northern Ireland) Order 1975 in connection with any premises which have been disposed of by the Member and which, prior to disposal were owned by the Member, the Scheme will provide indemnity against such legal liability, provided that

2.3.1 the Bodily Injury or loss of or damage to Property giving rise to such legal liability occurs during the Membership Year and on or after the Membership Date; and

2.3.2 the Scheme will not provide indemnity in respect of the costs incurred in removing, rebuilding, repairing, rectifying or replacing any such premises.

2.4 Motor Contingent Liability

2.4.1 Where the Member is legally liable to pay for accidental Bodily Injury or loss of or damage to Property arising out of the use of any motor vehicle in connection with the Relevant Function the Scheme will indemnify the Member against such legal liability.

2.4.2 This indemnity will not apply:

(a) in respect of any vehicle owned or provided by the Member;

(b) in respect of loss of or damage to such vehicle or to goods conveyed therein or thereon;

(c) while such vehicle is being driven by the Member's representative or by any person who to the knowledge of the Member or of the Member's representative does not hold a licence to drive such vehicle unless such person has held and is not disqualified for holding or obtaining such a licence;

(d) to legal liability in respect of which the Member is entitled to indemnity under any insurance policy; or

(e) outside the Territorial Limits.

2.4.3 For the purposes of this sub-paragraph 2.4, the term Member shall mean only the Member and no other party.

2.5 Overseas Personal Liability

2.5.1 Where any Relevant Person is visiting a country outside the Territorial Limits for less than six months continuously in connection with the Relevant Function, the Scheme will provide indemnity to the Member and, if the Member so requests, to any Relevant Person or any spouse or child of the Relevant Person accompanying such Relevant Person against legal liability incurred in a personal capacity for accidental Bodily Injury or loss of or damage to Property occurring during such a visit.

2.5.2 The indemnity described in this sub-paragraph 2.5 will not apply to legal liability:

(a) arising from any agreement or contract unless liability would have existed otherwise;

(b) arising out of the ownership or occupation of land or buildings; or

(c) arising from the ownership, possession or use of wild animals, firearms, (other than sporting guns) mechanically propelled vehicles, aircraft or water craft.

2.6 Tenant's Liability for Hired or Rented Premises

2.6.1 Where the Member is legally liable for loss of or damage to premises (or fixtures or fittings thereof) hired or rented to the Member for the purpose of occupancy by the Member, the Scheme will provide indemnity against such legal liability.

2.6.2 This indemnity will not apply to loss or damage caused by fire or any other peril against which a tenancy or other agreement stipulates that insurance shall be effected by or on behalf of the Members.

2.7 Liability for Buildings Temporarily Occupied

Where the buildings are temporarily occupied by the Member for the purposes of carrying out work in connection with the Relevant Function the Scheme will provide indemnity against legal liability in respect of loss of or damage to such buildings or their contents occurring during the Member's occupancy provided that such buildings are not owned, leased, hired or rented by the Member or any sub-contractor acting for or on behalf of the Member.

2.8 Car Park and Cloakroom Liability

Where vehicles or personal effects of persons other than the Member are held in trust by or in the custody or control of the Member the Scheme will provide indemnity against legal liability in respect of loss of or damage to such Property provided that such property:

2.8.1 is not being stored for a period in excess of 7 days by the Member for a fee or other consideration; and/or

2.8.2 is not held in trust by or in the custody or control of the Member for the purposes of work being carried out on such Property.

2.9 Property Being Worked Upon

Where the Member is working on Property not belonging to the Member or in the Member's custody or control and causes damage to such Property the Scheme will provide indemnity against legal liability for such damage.

2.10 Use of Mobile Plant

Where any mobile crane or excavator or other item of mobile plant is in use solely as a tool of trade the Scheme will provide indemnity against legal liability for accidental Bodily Injury or loss of or damage to Property caused by

such use other than loss or damage to the plant itself or to anything being lifted, lowered or pulled by such plant. The indemnity will not apply in circumstances where it is compulsory for the Member to insure or provide security as a requirement of any road traffic legislation;

2.11 Obstructing Vehicles

Where any vehicle is causing an obstruction and interfering with the performance of the business of the Member, the Scheme will provide indemnity against legal liability for accidental Bodily Injury or loss of or damage to Property arising from the movement of such vehicle by the Member or any Relevant Person or the application of a wheel clamp to the vehicle, provided that

2.11.1 if such obstructing vehicle is being moved on a road within the meaning of the Road Traffic Acts, such use will be restricted solely to the minimum movement of the vehicle required to obtain access to or exit from the Member's premises, and

2.11.2 if a wheel clamp is attached to a vehicle, a bold warning notice to this effect will be attached to the windscreen of such vehicle and the wheel clamp has been fitted in accordance with a legal right.

The indemnity in this sub-paragraph 2.11 will not apply in circumstances where it is compulsory for the Member to insure or provide security as a requirement of any road traffic legislation;

2.12 Consumer Protection Act 1987 and Food Safety Act 1990

2.12.1 The Scheme will provide indemnity to the Member, and if the Member so requests, any Relevant Person in respect of

(a) costs of prosecution awarded against the Member or any Relevant Person, and/or

(b) legal fees and expenses incurred with the Administrator's written consent in defence of such prosecution

arising from criminal proceedings brought, or in an appeal against conviction from such proceedings, in respect of a breach of Part II of the Consumer Protection Act 1987 or of Part II of the Food Safety Act 1990, provided that the proceedings relate to an offence committed or alleged to have been committed during a Membership Year and on or after the Membership Date and in the course of the Relevant Function.

2.12.2 The indemnity in this sub-paragraph 2.12 will not apply:

(a) in respect of fines or penalties of any kind; or

(b) to proceedings consequent upon any deliberate act or omission.

2.13 Advertising Liability

In so far as the following offences result from the advertising of the Member's products or services, the Scheme will provide indemnity to the Member in respect of:

2.13.1 libel and slander;

2.13.2 written or spoken material made public which belittles the product or service of others;

2.13.3 written or spoken material made public which violates an individual's right to privacy;

2.13.4 unauthorised taking of advertising ideas or style of business; and/or

2.13.5 infringement of copyright title or slogan.

2.14 Good Samaritans Act

The Scheme will provide indemnity at the request of the Member as if a separate Membership had been issued to any Relevant Person qualified as a first aider who is not otherwise qualified as a healthcare professional for all sums including Costs and Expenses that the Relevant Person becomes legally obliged to pay as Compensation for Bodily Injury resulting from any act or omission whilst performing a Good Samaritans Act provided that such persons are acting within the accepted parameters of their professional training.

2.15 Data Protection Act 1998

2.15.1 In the event of any proceedings brought against the Member by virtue of Section 13 of the Data Protection Act 1998 or any subsequent updating or replacement legislation (the “Data Protection Legislation”) the Scheme will provide indemnity against

(a) legal Costs and Expenses incurred in connection with the defence of such proceedings, and/or

(b) legal liability for Compensation to any individual who is entitled to such Compensation under the Data Protection Legislation.

2.15.2 The Scheme shall not be liable under this sub-paragraph 2.15 for:

(a) Personal Injury other than as described above or any loss of or damage to Property or any consequential loss;

(b) any liability which results from the Member having authorised the destruction or disclosure of data or from any other deliberate act or omission by the Member, which liability could reasonably have been expected to arise having regard to the nature and circumstances of such act or omission;

(c) any fine or penalty or statutory payment;

(d) fraud, dishonesty, insolvency, financial default, conspiracy, conversion, deceit, intimidation, inducement of breach of contract, injurious falsehood or breach of confidence;

(e) any act of libel or slander or defamation;

(f) any liability assumed by the Member by agreement and which would not have attached in the absence of such agreement or any liability in respect of liquidated damages or under any penalty clause; or

(g) any legal costs or expenses or any financial losses in respect of an order for rectification or erasure of data or any order requiring the data to be supplemented by any other statements.

2.15.3 The liability of the Scheme under this sub-paragraph 2.15 for all Compensation payable to any claimant or any number of claimants in respect of or arising out of any one event or series of events consequent on or attributable to one source or original cause shall not exceed £50,000.

2.15.4 Further, the maximum sum payable under this sub-paragraph 2.15 in any one Membership Year shall not exceed £500,000.

3 **Exceptions to Schedule 3**

A Public and Products Liability Claim will not include:

3.1 Personal Injury to any Relevant Person arising out of and in the course of employment by the Member in connection with the Relevant Function;

3.2 liability arising out of the possession, ownership or use by or on behalf of the Member or any person entitled to indemnity under this Schedule 3 of any

3.2.1 mechanically propelled vehicle or trailer attached thereto used in circumstances in respect of which insurance or security is necessary to meet the requirements of Road Traffic legislation; or

3.2.2 aircraft, aerial device, hovercraft or water craft;

provided that this exception will not apply to

(a) the loading or unloading of motor vehicles or trailers;

(b) the circumstances described in sub-paragraphs 2.4, 2.10 or 2.11;

(c) water craft which are less than 8 metres in length;

(d) barges used solely on inland waterways,

unless there is no indemnity afforded under any more specific insurance;

3.3 loss of or damage to:

3.3.1 property belonging to or hired to the Member;

3.3.2 property which is held in trust by or held in the custody or control of the Member or any Relevant Person or any party who is carrying out work on behalf of the Member where such property is held for the purposes of:

(a) sale, supply, transportation or storage; or

(b) work being carried out at the Member's normal place of business or that of the party carrying out the work.

3.3.3 property for which there is a contractual requirement to effect insurance (other than public liability insurance); or

3.3.4 property for which there is a contractual requirement to effect insurance by reason of Clause 21.2.1 of the 1980 Edition of the Joint Contracts Tribunal Conditions of Contract (or the corresponding clause in any prior version or any subsequent revision or substitution thereof) or by any clause or similar intent under any other conditions of contract;

3.4 loss of or damage to, or the cost incurred by anyone in repairing, removing, replacing, re-applying, reinstating or rectifying, any Products Supplied other than Products Supplied under a separate, previously completed contract;

3.5 the cost incurred by anyone in:

3.5.1 recalling or altering or making refunds in respect of any Products Supplied; or

3.5.2 remedying any defects or alleged defects in land or buildings or structures or other premises disposed of by the Member.

3.6 liquidated damages or penalty clauses or fines or punitive or exemplary damages or any damages resulting from the multiplication of compensatory damages;

3.7 liability arising out of Products Supplied with the knowledge of the Member by or on behalf of the Member which could affect:

3.7.1 the navigation, propulsion or safety of any aircraft or other aerial device;or

3.7.2 the safety or operation of nuclear installations or offshore accommodation, exploration, drilling or production rig/installation or offshore support vessel;

3.8 any Products Supplied by or on behalf of the Member where legal liability has been accepted by agreement (other than liability arising out of a condition or warranty of goods implied by Law) unless such liability would have attached in the absence of such agreement;

3.9 all claims for pollution or contamination of buildings or other structures or of water or land or the atmosphere and all Personal Injury or loss of or damage to Property directly or indirectly caused by such pollution or contamination

other than caused by a sudden, identifiable, unintended and unexpected incident which occurs in its entirety at a specific time and place during the Membership Year and on or after the Membership Date (a "Pollution Liability Claim").

3.9.1 All pollution or contamination which arises out of one incident shall be deemed to have occurred on the date that the Member first becomes aware of such incident.

3.9.2 The liability of the Scheme for pollution or contamination shall not exceed in the aggregate the sum of £10,000,000 in respect of all claims during any one Membership Year;

3.10 any liability arising in connection with work undertaken in or on any offshore accommodation, exploration, drilling or production rig/installation or offshore support vessel;

3.11 any liability arising from:

3.11.1 the proprietary manufacture of medicines drugs or any other pharmaceutical goods other than for use or application in the course of the Relevant Function;

3.11.2 incineration and other activities related to clinical waste disposal other than the packaging and storage of clinical waste in preparation for removal from the premises; or

3.11.3 clinical trials and participation in clinical trials carried out by or on behalf of the Member.

3.12 any liability in respect of advertising injury that results from:

3.12.1 the actions of any persons or organisation in the business of advertising, publishing or broadcasting;

3.12.2 the wrong description of the price of goods, products or services;

3.12.3 the failure of goods, products or services to conform with advertising quality or performance; or

3.12.4 the failure of any person or organisation to do what is required by contract or agreement, however, this exclusion does not apply to the unauthorised taking of advertising ideas if the contract or agreement does not specifically prohibit such taking.

4 **Financial Loss Extension to Schedule 3**

4.1 A Public and Products Liability Claim may also include legal liability for Financial Loss as defined below in respect of claims first made against the Member (each a "Financial Loss Claim") during the Membership Year and on

or after the Membership Date within the Territorial Limits subject to the terms, exceptions and conditions of this Scheme.

4.2 Limit of Liability

The liability of the Scheme under this extension including all Costs and Expenses shall not exceed in the aggregate the sum of £250,000 in respect of all claims during any one Membership Year.

4.3 Financial Loss

For the purpose of this paragraph 4 "Financial Loss Claim" shall mean a financial cost, expense or other pecuniary loss suffered by any person, firm or company other than the Member or any Relevant Person and not occasioned by Personal Injury or loss of or damage to the Property.

5 **Exceptions to Financial Loss Extension to Schedule 3**

A Financial Loss Claim will not include:

5.1 any event which results from or could reasonably have been expected to result from a deliberate act or omission of the Member, having regard to the nature and circumstances of such act or omission;

5.2 any act of fraud, dishonesty, insolvency, financial default, conspiracy, conversion, deceit, intimidation, inducement of breach of contract, injurious falsehood or passing off or infringement of tradework, trade name, merchandise mark, registered design, copyright or patent right;

5.3 any act of libel or slander or defamation;

5.4 the abandonment or postponement of any exhibition, meeting, function or other event organised by the Member;

5.5 liability arising by virtue of the Data Protection Acts;

5.6 financial loss arising solely from the failure or unsuitability of products to perform the function for which they were manufactured, sold, supplied, repaired, serviced, tested or processed;

5.7 financial loss suffered as a result of non-delivery or late delivery of goods or non-completion or late completion of works or operations by or on behalf of the Member;

5.8 prototype goods or goods which are supplied on an experimental or trial basis;

5.9 delays, strikes or labour disturbances;

5.10 financial loss sustained by any party to any reciprocal arrangement for the storage or processing of computer data or use of computer facilities;

5.11 any liability which is inevitable having regard to the circumstances and nature of the work undertaken or Product Supplied;

5.12 liability arising directly or indirectly in connection with claims arising or proceedings commenced in the United States of America or Canada; or

5.13 liability arising out of any agreement where but for the agreement no liability would exist.

SCHEDULE 4
DIRECTORS' AND OFFICERS' LIABILITY CLAIM

Qualifying Liability:

1 **Definition**

In the event of any Claim first made against an Indemnified Person during a Membership Year and on or after the Membership Date for any wrongful act the Directors' and Officers' Liability Claim will be for the Loss of the Indemnified Person.

2 For the purposes of this Schedule 4:

2.1 "*Claim*" means (i) any suit or proceeding brought by any person or organisation against an Indemnified Person for monetary damages or other relief, or (ii) any written demand from a person or organisation that it is the intention of such person or organisation to hold one or more Indemnified Persons responsible for the results of any specified wrongful act;

2.2 "*Defence Costs*" means reasonable and necessary fees (including legal fees), costs and expenses incurred with the written consent of the Administrator resulting solely from the investigation, adjustment, defence and appeal of any claim or criminal prosecution against an Indemnified Person or representation of an Indemnified Person at any official investigation into the affairs of the Member but shall not include salaries of directors, officers or employees of the Member;

2.3 "Indemnified Person" means either:

2.3.1 a Board Member; or

2.3.2 a Relevant Person who is not a Board Member;

2.4 "*Loss*" means damages, judgements, settlements and Defence Costs. However, Loss shall not include civil or criminal fines or penalties imposed by law, punitive or exemplary damages (other than damages awarded for libel and slander), taxes, any amount for which an Indemnified Person is not legally liable or matters which may be deemed uninsurable; and

2.5 "Wrongful Act" means:

2.5.1 in the case of the Board Member, a liability arising out of any indemnity properly given by any Member to that Board Member, and any liability in respect of any consequential or ancillary expense arising in connection with the liability arising from the indemnified liability; or

2.5.2 in the case of a Relevant Person who is not a Board Member, any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, omission, breach of warranty of authority, libel, slander or any other act committed by

any Relevant Person not being a Board Member solely in the course of a Relevant Function. Same or related wrongful acts shall constitute a single wrongful act.

3 **Exceptions to Schedule 4**

3.1 A Directors' and Officers' Liability Claim will not include any claim for Loss made against an Indemnified Person:

3.1.1 arising out of, based upon or attributable to the gaining in fact of any personal profit or advantage to which an Indemnified Person was not legally entitled;

3.1.2 arising out of, based upon or attributable to the committing in fact of any dishonest or fraudulent act;

3.1.3 arising out of, based upon or attributable to the facts alleged, or to the same or related wrongful acts alleged or contained, in any claim which has been reported under any previous policy of insurance;

3.1.4 arising out of, based upon or attributable to any pending or prior litigation at the Membership Date, or alleging or derived from the same or essentially the same facts as alleged in any pending or prior litigation, or any pending demand, suit or other proceeding, or order, decree or judgement entered, against any Indemnified Person before the Membership Date;

3.1.5 arising out of, based upon or attributable to any Personal Injury or damage to Property provided, however, that the exclusion in this sub-paragraph 3.1.5 shall not apply to any claim for financial damages which do not relate to compensation for Personal Injury;

3.1.6 arising out of, based upon, attributable to, or in any way involving, directly or indirectly

(a) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants (meaning, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste including but not limited to material to be recycled, reconditioned or reclaimed), or

(b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants, nuclear material or nuclear waste;

3.1.7 in a capacity as trustee or fiduciary under law (statutory or non-statutory including common) or administrator of any pension, profit sharing or employee benefit programme provided that the exclusion in this sub-paragraph 3.1.7 shall not be deemed to apply to an Indemnified Person acting in their capacity as a pensions administrator of the Member; or

3.1.8 arising out of, based upon or attributable to, or in any way involving, directly or indirectly any allegation of malicious falsehood.

3.2 For the purpose of determining the applicability of sub-paragraphs 3.1.1 and 3.1.2, the Wrongful Acts of any Indemnified Person shall not be imputed to any other Indemnified Person.

3.3 The exclusion in sub-paragraph 3.1.6 shall not apply to Defence Costs incurred by a Member, provided however, that the aggregate limit of liability that the Scheme shall be liable to pay in respect of such claim(s) or development(s) thereof is specifically sub-limited to £250,000 in any one Membership Year.

SCHEDULE 5
PROFESSIONAL INDEMNITY CLAIM

Qualifying Liability:

1 **Definition**

The Professional Indemnity Claim will be for Compensation and Costs and Expenses incurred in or about the conduct of a Relevant Function arising from any Claim or Claims made against the Member:

1.1 by reason of an actual or alleged breach of professional duty committed by

(a) the Member, or

(b) any Relevant Person;

1.2 by reason of any dishonest, fraudulent, criminal or malicious act on the part of any Relevant Person;

1.3 for libel, slander or defamation, either written or spoken by

(a) the Member, or

(b) any Relevant Person; or

1.4 which arises from the physical destruction or damage, loss or mislaying of any document which after diligent search cannot be found.

2 **Exceptions to Schedule 5**

A Professional Indemnity Claim will not include any claim which:

2.1 results directly or indirectly from Personal Injury sustained by any Relevant Person arising out of and in the course of his/her employment by the Member or for any breach of any obligation owed by the Member to any Relevant Person;

2.2 results directly or indirectly from the ownership, possession or use by or on behalf of the Member of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

2.3 results directly or indirectly from any dishonest, fraudulent, criminal or malicious act or omission of the Member, other than as provided by sub-paragraphs 1.2 and 2.4;

2.4 arises under sub-paragraph 1.2, from any dishonest, fraudulent, criminal or malicious act or omission committed by any person after the discovery of reasonable cause for suspicion of such act or omission in relation to that person, and provided that:

2.4.1 no person committing or condoning a dishonest, fraudulent, criminal or malicious act or omission shall be entitled to indemnity; and

2.4.2 the following shall be deducted from any amount payable:

(a) any monies which but for such act would be due from the Member to the person committing or condoning such act; and

(b) any monies held by the Member and belonging to such person.

2.5 exists to the extent of any fine or penalty, punitive, exemplary or non-compensatory damages (other than exemplary damages in respect of libel, slander or defamation);

2.6 results from any agreement by the Member in so far as liability under such agreement exceeds the Member's liability in the absence of such agreement;

2.7 results from the Member's associations whilst acting in consortia or joint venture with others, other than in respect of loss(es) arising from the Member's own acts or omissions;

2.8 is brought about by, contributed to, or consequent upon any circumstances existing prior to the Membership Date and which the Member ought reasonably to have known might give rise to a loss;

2.9 arises where action for damages is brought in a court of law outside the Territorial Limits, or where action is brought in a court of law within the Territorial Limits to enforce a foreign judgment whether by way of reciprocal agreement or otherwise;

2.10 is based upon, arising out of or relating directly or indirectly from, in consequence of or in any way involving pollution;

2.11 arises from any Claim for Personal Injury sustained by any person (other than emotional distress arising from any libel, slander or defamation), or for any loss, damage or destruction of property, including loss of use thereof unless such Claim directly results from negligent advice, design, specification or formula;

2.12 results from or relating to Products Supplied by the Member or any person, firm or company acting for or on behalf of the Member;

2.13 is a result of or relating directly or indirectly from the insolvency or bankruptcy of the Member;

2.14 arises from any Claim alleging infringement of copyright, patent, registered design, trade mark or passing off and/or any other intellectual property rights;

2.15 is in respect of costs and expenses incurred by the Member in the replacement or restoration of any document arising directly or indirectly from the failure or inefficacy of any programme, instruction or data for use in any computer or other electronic data processing device, equipment or system occasioned other than through its physical destruction or damage;

2.16 is any liability to which a Member is subject in respect of Bodily Injury which is a qualifying liability for the purposes of the National Health Service (Clinical Negligence Scheme) Regulations 1996 (as amended) or the National Health Service (Existing Liabilities Scheme) Regulations 1996 (as amended); or

2.17 arises from clinical trials and participation in clinical trials carried out by or on behalf of the Member.

SCHEDULE 6
PERSONAL ACCIDENT CLAIM

Qualifying Liability:

1 **Definition**

In the event of the Person sustaining Accidental Bodily Injury during the Membership Year and on or after the Membership Date and during the Operative Time(s) a Personal Accident Claim will compensate the Member by payment of the appropriate Benefit as set out below.

2 For the purposes of this Schedule 6:

2.1 "*Person*" means either

2.1.1 in respect of Category (a) (Assault), any Relevant Person, or

2.1.2 in relation to Category (b) (Call-out Teams) any Relevant Person who is also a member of a Member's emergency call-out team or emergency transfer/retrieval team;

2.2 "Operative Time" means either

2.2.1 in relation to Category (a), in the course of or as a direct consequence of the Person acting in the course of the Relevant Function for Accidental Bodily Injury occasioned by assault by a person or animal, or

2.2.2 in relation to Category (b), during emergency call out or emergency transfer/retrieval only, including exit, on scene and return for Accidental Bodily Injury occasioned other than by an excluded cause;

2.2.3 "Accidental Bodily Injury" means accidental bodily injury sustained by the Person which solely and independently of any other cause (except illness directly resulting from or medical or surgical treatment rendered necessary as a result of such injury) occasions the death of or loss or disablement to the Person within 24 months from the date such injury is caused.

2.2.4 "*Benefits*" means:

Accidental Death	£20,000
Permanent Total Disablement	£20,000
Loss of Limb or Eye	£20,000

(a) Only one Benefit shall be payable in respect of any one Accidental Bodily Injury to a Person.

(b) The maximum liability of the Scheme for Benefits in the aggregate in respect of all Persons shall not exceed £250,000 any one incident.

Otherwise the individual Benefits shall be reduced proportionately until the total does not exceed £250,000;

2.2.5 "Loss of Eye" means total and Permanent loss of sight in one or both eyes.

2.2.6 "*Loss of Limb*" means either

(a) Permanent loss by physical separation of one or more

(i) hands at or above the wrist, and/or

(ii) feet at or above the ankle, and/or

(b) Permanent loss of use of one or more hands or feet;

2.2.7 "*Permanent*" means a condition of disability which, in the opinion of the Scheme's medical advisors at 12 months after the date of the incident giving rise to Accidental Bodily Injury, is likely to continue without improvement for the rest of the Person's life; and

2.2.8 "*Permanent Total Disablement*" means permanent disablement wholly preventing the Person from engaging in or giving attention to his/her usual business, profession or occupation caused other than by Loss of Limb or Loss of Eye, which disablement lasts without interruption for more than 12 months from the date of the Accidental Bodily Injury.

3 **Exceptions to Schedule 6**

A Personal Accident Claim will not include:

3.1 Accidental Bodily Injury sustained by any person aged 70 years or over;

3.2 the Person suffering from any disability due to a gradually operating cause;

3.3 the Person being under the influence or being directly or indirectly affected by alcohol or drugs or any condition thereby aggravated, other than drugs taken under the direction of registered medical practitioners (other than for the treatment of drug addiction);

3.4 suicide, attempted suicide or intentional self-inflicted injury by the Person or from deliberate exposure to danger (except in an attempt to save human life) or from the Person's own criminal act;

3.5 the Person engaging in or taking part in naval, military or air force service or operations;

3.6 Accidental Bodily Injury resulting from war, whether declared or not, while a Relevant Person is in the Territorial Limits.

INCOME GENERATION ACTIVITIES

SUMMARY OF COVER

Income Generation Activities
Summary of Cover under the NHS Litigation Authority
Non-Clinical Risks Scheme

4 The following activities, whilst they are being conducted Outside the NHS (as defined in paragraph 2 below) have been categorised as excluded from the Scheme in respect of cover for Public/Products Liability, non-clinical Professional Indemnity, Intellectual Property Infringement and Cyber, Data Security and Multimedia Liability. All activities benefit from Employers' Liability and Directors' and Officers' Liability cover:

4.1 **Vehicle Related Risks** including Ambulance Services, Repair of Own Vehicles under Warranty, Transport, Vehicle Testing or Servicing;

4.2 **Catering/Entertainment/Fund Raising/Hospitality** including Children's Entertainment, Catering, Fund Raising Events & Sponsorship, Hospitality, Nursery/Creche/Playgroup Facilities;

4.3 **Category II Work as defined in current Terms & Conditions of Service** including examinations and/or reports on patients for the Court, insurance companies and the DWP, completion of cremation certificates, psychiatric reports;

4.4 **Clinical Audit, Quality Assurance, Quality Control Laboratory**;

4.5 **Clinical Waste Disposal, Clinical Waste Incineration, Incineration other than Clinical Waste**;

4.6 **Computer Software (sale or design), Information Technology Services**;

4.7 **Fitness Centres, Yoga, Travel Clinic**;

4.8 **Legal Services**;

4.9 **Pharmaceuticals Manufacture**;

4.10 **Publications**;

4.11 **Processing and Sale of Human Tissue and Body Parts**; and

4.12 **Radiology (Film Copying & Processing)**;

5 "Outside the NHS" means the provision of services, supply of facilities or products to any party other than NHS Trusts, other NHS organisations, NHS staff (in their capacity as Employees) and NHS patients (in their capacity as patients).

6 All Income Generation activities are covered by the Scheme if they are conducted within the NHS, i.e. they solely involve other NHS Trusts, other NHS organisations, NHS staff and NHS patients.

7 In cases of uncertainty about the status of individual Income Generation activities, the Administrator will decide whether these qualify for cover under the Scheme.

8 Trusts have the option to purchase commercial insurance in respect of Public/Products Liability and non-clinical Professional Indemnity cover for those activities that are not covered by the Scheme.