

DATED

2006

(Please insert the date the Agreement is signed by Trust Chief Executive)

(1) NATIONAL HEALTH SERVICE LITIGATION AUTHORITY

(2) CNST MEMBER **(Please insert the full name of Trust)**

CLINICAL NEGLIGENCE SCHEME FOR TRUSTS

PERIODICAL PAYMENTS AGREEMENT

This Agreement is made this _____ day of _____ 200___. **(Please insert date Agreement is signed by Trust Chief Executive)**

BETWEEN:

- (1) NATIONAL HEALTH SERVICE LITIGATION AUTHORITY of Napier House, 24 High Holborn, London WC1V 6AZ (hereinafter referred to as "the NHSLA"); and
- (2) CNST MEMBER of [_____ Address _____] (hereinafter referred to as "the Member") **(Please insert full name of Trust)**

Known collectively hereinafter as "the Parties".

WHEREAS:

- (A) By virtue of the provisions in the National Health Service (Clinical Negligence Scheme) Regulations 1996, the Member joined the Clinical Negligence Scheme For Trusts ("the CNST") on the ___ day of _____. **(Please insert the date the Trust or its predecessors joined CNST)**
- (B) For as long as the Member remains a member of CNST NHSLA remains responsible for the payment of damages and costs for which the Member may become liable (by way of settlement, judgment of the court or otherwise) in relation to clinical negligence claims made against the Member ("Liabilities"), including without limitation any Liabilities arising out of an order or settlement which provides for Periodical Payments or structured settlements pursuant to the Damages Act 1996 ("collectively referred to as Periodical Payments but to include structured settlements").
- (C) The purpose of this Agreement is to record the terms upon which NHSLA has agreed to ensure the continued payment of Periodical Payments, arising pursuant to an order or settlement made or entered into, whilst the Member is a member of CNST, but payable, if ever the Member were to cease to be a member of CNST, after the Termination Date (as hereinafter defined).

1 DEFINITIONS

- 1.1 In this Agreement the terms used will be as defined in the CNST Membership Rules and as follows:

Lump Sum Liability	the sum to be paid to cover all future Periodical Payments, upon leaving the CNST, as calculated in accordance with the terms of Appendix 1.
Periodical Payment(s)	as defined in s.2(1) of the Damages Act 1996.
Termination Date	the date when the Member ceases to be a member of CNST.

2 OBLIGATIONS OF THE PARTIES

- 2.1 If the Member's membership of CNST is terminated for any reason, the Member agrees to pay to the NHSLA a lump sum equal to the Lump Sum Liability to cover all future liability for Periodical Payments, which become payable pursuant to a court order made or settlement entered into prior to the Termination Date.
- 2.2 In consideration of and subject to the above payment, if for any reason the Member ceases to be a member of CNST, the NHSLA agrees to procure that all the Member's continuing liabilities, resulting from Periodical Payments, which are payable after the Termination Date, in respect of orders made or settlements entered into prior to the Termination Date, are paid by and through CNST.
- 2.3 In respect of all matters where a Periodical Payment is being considered as a possible way of resolving a claim the NHSLA will use reasonable endeavours to notify the Member of that possibility but in respect of any Periodical Payment entered into by Agreement on behalf of a Member prior to the Termination Date, the Member will be deemed to have consented to the terms of that Periodical Payment. All matters involving the Member, where Periodical Payments have already been determined or are currently being considered, are listed in Appendix 2.
- 2.4 This Agreement will apply to all Periodical Payments, whether the result of court orders or out of court settlements.

3 LUMP SUM LIABILITY

- 3.1 The Lump Sum Liability will be calculated in accordance with the terms set out in Appendix 1.
- 3.2 The Member can obtain an assessment of the level of its Lump Sum Liability, to settle future Periodical Payments, compiled in accordance with Appendix 1, by applying in writing to the NHSLA.
- 3.3 The NHSLA will require 28 Days notice to provide the Lump Sum Liability assessment. NHSLA shall be entitled to levy a fair and reasonable administration fee in respect of the cost of providing this assessment.

4 PAYMENT

- 4.1 Where a Member serves or is served notice of termination of membership of CNST, NHSLA shall, not less than 21 days prior to the prospective Termination Date, notify the Member, in writing, of the amount of the Lump Sum Liability, and that amount shall be payable by the Member by no later than the Termination Date; in the absence of manifest error on the face of the written notice NHSLA's written notice shall be conclusive evidence of the amount payable by the Member as the Lump Sum Liability and if not paid by the Termination Date the amount payable shall carry interest at the annual rate of 3% above Barclays Bank PLC base rate from time to time calculated on the balance outstanding on a daily basis from the Termination Date until and including the actual date for payment.

5 GENERAL TERMS

- 5.1 Where there is conflict between the Membership Rules and this Agreement, the terms of this Agreement will prevail.
- 5.2 Subject to Clause 5.1 each of NHSLA and the Member shall take all steps as are necessary to give effect to the terms of this Agreement in a manner that is consistent with the Membership Rules.
- 5.3 Members will be expected fully to co-operate and liaise with the Administrators and Scheme Managers and take such steps as may be requested in connection with the administration of this Agreement and to respond promptly to all requests for information.

6 LAW AND JURISDICTION

- 6.1 This Agreement shall in all respects be governed by and construed in accordance with English law and the parties hereby submit to the jurisdiction of the English courts.

7 DISPUTES

- 7.1 The Parties shall endeavour to resolve any dispute arising under this Agreement by mediation.

8 THIRD PARTY RIGHTS

- 8.1 No person who is not a party to this Agreement shall be entitled to enforce any term of this Agreement for its / his / her own benefit and the application of the Contracts (Rights of Third Parties) Act 1999 to the provisions of this Agreement is hereby expressly excluded.

IN WITNESS WHEREOF this Agreement is duly signed by the Parties hereto and delivered on the date set out at the beginning of this Agreement.

SIGNED by
For and on behalf of
NATIONAL HEALTH SERVICE
LITIGATION AUTHORITY

SIGNED by
For and on behalf of
[name of Member](Please insert full name of Trust)