

## GUIDANCE NOTES FOR WELSH NHS FORMS OF INDEMNITY AND WELSH NHS DELIVERY NOTE

### Part A Forms and Delivery Notes

1. The Forms of Indemnity provide protection to a Health Board or Trust when they are in receipt of equipment or goods from a supplier in cases where the equipment is being loaned to them or where the ownership of goods is being transferred free of charge to them. However the Health Board or Trust will remain liable for the cost of repairing accidental damage (except where caused by the Supplier).
2. NHS Form of Indemnity A ("Form A") is to be used for equipment on loan from a supplier to a Health Board or Trust. Only one Form A needs to be executed by a supplier.
3. NHS Form of Indemnity B ("Form B") is to be used for goods in which the legal rights of ownership are to be transferred by the supplier to the Health Board or Trust (namely, when the Health Board or Trust is the beneficiary of a gift from a supplier). Only one Form B needs to be executed by a supplier.
4. The forms may be executed by the Health Board or Trust or by PS on behalf of all the Health Boards or Trusts. The Forms are therefore drafted so that either the Health Board or Trust or PS is the party and need to be completed and executed accordingly.
5. Form A states that the loan of the equipment shall not be deemed to be a contract for the hire of goods as per the Supply of Goods and Services Act 1982.
6. As the Sale of Goods Act 1979 (as amended) does not automatically apply to Form B (because the Health Board or Trust is not paying for the goods of which it is likely to become the owner), certain parts of it have been incorporated.
7. Forms A and B are to be executed as deeds to avoid the supplier's undertakings not being enforceable because of a lack of consideration (that is, a promise given by the Health Board or Trust, which prevents the supplier's promises from being purely gratuitous).
8. An NHS Delivery Note – or where the Deed acts as a master indemnity agreement for all loans made by the supplier, a Suppliers standard delivery note - must be completed and signed by the Supplier and the Health Board or Trust or the user of the equipment at the outset of the loan.
9. The NHS Delivery Note contains different sections for completion according to whether the Delivery Note is being used in conjunction with Form A or Form B. **In either case – i.e. use of Form A or B - the reference number given to the Form of Indemnity must be recorded on the Delivery Note, or Suppliers standard delivery note, whichever is used, so that it is clear which goods or items of equipment relate to which Form of Indemnity.**

10. The NHS Delivery Note, or Suppliers standard delivery note, must record the details of the equipment including model/make, serial number, value, description and location. If appropriate, diagrams should accompany the Delivery Note or Suppliers standard delivery note, whichever is used. It should also state the intended purpose of the equipment, as the supplier is warranting that the equipment is fit for this stated purpose. For Form A the period of the loan should also be specified on the Delivery Note, or Suppliers delivery note whichever is used, and trusts should ensure that they amend the expiry date should the original loan be extended.
11. Provided that the transaction is one entered into at trust level, each Form of Indemnity and NHS Delivery Note, or Suppliers standard delivery note, whichever is used, once entered into, should be retained by the Health Board or Trust. Procurement Services will not require a copy of either document.
12. If in doubt about any aspect of the Forms of Indemnity or the NHS Delivery Note, or Suppliers standard delivery note whichever is used, you should contact Beverley Gregory at Procurement Services acting as agent for NHS Trusts and Health Authorities in Wales, Whose principal office is at PO Box 183, Bevan House, 25-30 Lambourne Crescent, Llanishen, Cardiff, CF14 5GT.
13. If for any reason the equipment remains on the premises after the period of loan (covered by the indemnity) has expired then it remains at the Suppliers risk. In the absence of any agreement replacing that applicable during the term of the loan, the supplier should ensure that the equipment is removed as soon as the term ends.

## **Part B Completing the Forms**

14. Instructions
  - 14.1 On the indemnity forms A and B on the first page, the company's name will need to be completed. Please leave the space for the date blank.
  - 14.2 Two signatures by the supplier's director(s)/company secretary are required at the back of each form in the second block of signatures. The upper block is used for endorsement of the agreement by appropriate Health Board or Trust or PS signatories (whichever is applicable).
  - 14.3 Forms A and B bearing original signatures should be passed (normally by post) to PS or the Health Board or Trust (whichever is applicable).
  - 14.4 Once the agreement has been checked, and signed by both parties, a copy will be posted to the supplier for retention.

14.5 Details will be included in the indemnity agreement list of suppliers published on the PS website. NHS Health Boards and Trusts in Wales can view all the details at [nww.whs.wales.nhs.uk](http://nww.whs.wales.nhs.uk) and suppliers at [www.procurement.wales.nhs.uk](http://www.procurement.wales.nhs.uk)

Forms to be sent to:  
Beverley Gregory  
Procurement Services  
PO Box 183  
Bevan House  
25-30 Lambourne Crescent  
Llanishen  
Cardiff  
CF14 5GT