



# **NHS England Standard Alternative Provider Medical Services Contract 2015/16**

**NHS England INFORMATION READER BOX****Directorate**

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The NHS Commissioning Board (NHS CB) was established on 1 October 2012 as an executive non-departmental public body. Since 1 April 2013, the NHS Commissioning Board has used the name NHS England for operational purposes.

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it;
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from, healthcare services and in securing that services are provided in an integrated way where this might reduce health inequalities."

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## **PARTIES**

**(1) The Commissioner**

**(2) The Contractor<sup>1</sup>**

## **BACKGROUND:**

- A. The Commissioner is a statutory body established pursuant to section 1H of the National Health Service Act 2006. It is the duty of the Commissioner to exercise its powers so as to provide or secure the provision of primary medical care services
- B. In order to achieve this objective the Commissioner is empowered under section 83 of the National Health Service Act 2006 to make such arrangements for the provision of primary medical care services as it thinks fit.
- C. The Commissioner is now entering into this Contract for the provision of the Services with the Contractor from and including the Commencement Date.

In consideration of the mutual covenants and undertakings set out below **THE PARTIES AGREE** as follows:

## **1 Status of Contract**

- 1.1 The Contractor [is/is not]<sup>2</sup> a Health Service Body for the purposes of section 9 of the 2006 Act. Accordingly, the Contract [is/is not]<sup>3</sup> an NHS Contract.<sup>4</sup>

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<sup>1</sup> Insert details on P.100

<sup>2</sup> Amend according to status of Contractor

<sup>3</sup> Amend according to status of Contractor

<sup>4</sup> This is a requirement of the APMS Directions

## **2 Commencement and Duration of the Contract**

- 2.1 The Contract shall commence on the Commencement Date<sup>5</sup>.
- 2.2 Unless terminated earlier in accordance with Clauses 58 to 62 or other prior lawful termination and subject to Clause 2.3, the Contract will terminate on the Expiry Date<sup>6</sup>.
- 2.3 The Commissioner may, no later than [nine (9) months]<sup>7</sup> prior to the Expiry Date, serve notice on the Contractor to extend the Contract by a maximum of [one (1) year]<sup>8</sup>, such extension commencing on the day after the Expiry Date.
- 2.4 Without prejudice to any other term of the Contract, the Commissioner may terminate the Contract at any time on [nine (9) months']<sup>9</sup> notice.

## **3 Services and Attendance on Patients**

- 3.1 The Commissioner appoints the Contractor to provide the Services in accordance with the Service Specification set out in Schedule 2 commencing on the Commencement Date and continuing for the duration of the Contract and in accordance with and subject to the provisions of the Contract.
- 3.2 The Contractor shall take reasonable steps to ensure that any Patient who has not previously made an appointment and attends at the Practice Premises during the Core Hours for Essential Services is provided with such services by an appropriate Health Care Professional during that period except where:
- 3.2.1 it is more appropriate for the Patient to be referred elsewhere for services under the 2006 Act or the 2012 Act (as the case may be); or

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<sup>5</sup> Insert details on P.99

<sup>6</sup> Insert details on P.103

<sup>7</sup> For local determination

<sup>8</sup> For local determination

<sup>9</sup> For local determination

3.2.2 the Patient is then offered an appointment to attend again within a time which is reasonable having regard to all the circumstances and the Patient's health would not thereby be jeopardised.

3.3 In the case of a Patient whose medical condition is such that, in the reasonable opinion of the Contractor, the provision of Services in Core Hours is needed and it would be inappropriate for the Patient to attend the Practice Premises during Core Hours, the Contractor shall provide Services to that Patient at whichever is appropriate of the following places:

3.3.1 the place recorded in the Patient's medical records as being his last home address;

3.3.2 such other place as the Contractor has informed the Patient and the Commissioner is the place where it has agreed to visit and treat the Patient;

3.3.3 some other place in the Patient Registration Area.

3.4 Nothing in this Clause 3 prevents the Contractor from:

3.4.1 arranging for the referral of a Patient without first seeing the Patient, in a case where the medical condition of that Patient makes that course of action appropriate; or

3.4.2 visiting the Patient in circumstances where this Clause 3 does not place it under an obligation to do so.

3.5 Where the Contractor provides Out of Hours Services under this Contract, (as set out in Schedule 2), the Contractor will (to the extent that they are relevant to the provision of the Services):

3.5.1 meet the quality requirements set out in the document entitled "National Quality Standards in the Delivery of Out of Hours Services" published on 20 July 2006 (or any subsequent successor publication);

- 3.5.2 comply with any requests for information which it receives from or on behalf of the Board about the provision by the Contractor of Out of Hours Services to its Registered Patients in such manner, and before the end of such period, as is specified in the request.

## **4 Quality Standards**

- 4.1 Without prejudice to the Contractor's obligations to meet all performance requirements under the Contract, the Contractor shall meet all NHS Requirements notified to it by the Commissioner and, in particular, the standards set out in Standards for Better Health (or any subsequent successor devised by the Care Quality Commission or otherwise).
- 4.2 The Contractor shall provide the Services in accordance with the Service Specification and to such standards as are more particularly described in the Service Specification set out in Schedule 2 and in accordance with all requirements of the Contract and its Schedules.
- 4.3 The Contractor shall participate, as the Commissioner may reasonably require, in any other locally agreed quality assurance schemes including (without limitation) significant event reporting.

## **5 Level of Skill**

- 5.1 Without prejudice to the Contractor's obligations to meet all performance requirements under the Contract, the Contractor shall carry out its obligations under the Contract in a timely manner and with reasonable care and skill, including where appropriate such level of care and skill as would be expected from a competent professional carrying out the relevant obligation and in any event in accordance with Good Practice.

## **6 Premises and Equipment**

- 6.1 The Contractor will provide the Services from the Practice Premises. The provisions of Schedule 3 shall apply to the Practice Premises.
- 6.2 Notwithstanding the provisions of Schedule 3, the Contractor shall ensure that the Premises used for the provision of the Services under the Contract are:
- 6.2.1 suitable for the delivery of the Services; and
  - 6.2.2 sufficient to meet the reasonable needs of the Contractor's patients.<sup>10</sup>

## **7 Loaned Equipment**

- 7.1 The Contractor shall satisfy itself that any Loaned Equipment (including without limitation that listed in Part 2 of Schedule 3) is suitable for the purpose intended and the provisions of Part 2 of Schedule 3 shall apply accordingly.

## **8 Telephone Services**

- 8.1 The Contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used by:
- 8.1.1 Patients to contact the Practice for any purpose related to the Contract; or
  - 8.1.2 any other person to contact the Practice in relation to services provided as part of the health service,
- starts with the digits 087, 090 or 091, 0844, or any other premium rate numbers, or consists of a personal number, unless the service is provided free to the caller.
- 8.2 In this Clause 8, "personal number" means a telephone number which starts with the number 070 followed by a further 8 digits, or 07 followed by a further 9 digits.

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<sup>10</sup> This is a requirement of the APMS Directions

## **9 Cost of Relevant Calls**

- 9.1 The Contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless, having regard to the arrangement as a whole, persons will not pay more to make calls to the Practice Premises than they would to make equivalent calls to a Geographical Number.
- 9.2 Where the Contractor is party to an Existing Contract or Other Arrangement for a telephone service under which persons making Relevant Calls to the Practice Premises call a number which is not a Geographical Number, the Contractor must comply with Clause 9.3.
- 9.3 The Contractor must:
- (a) before the Commencement Date, review the arrangement and consider whether, having regard to the arrangement as a whole, persons pay more to make Relevant Calls than they would to make equivalent calls to a Geographical Number; and
  - (b) if the Contractor so considers, take all reasonable steps, including in particular considering the matters specified in Clause 9.4, to ensure that, having regard to the arrangement as a whole, persons will not pay more to make Relevant Calls than they would to make equivalent calls to a Geographical Number.
- 9.4 The matters referred to in Clause 9.3(b) are:
- (a) varying the terms of the contract or arrangement;
  - (b) renegotiating the terms of the contract or arrangement; and
  - (c) terminating the contract or arrangement.
- 9.5 If, despite taking all reasonable steps referred to in Clause 9.3(b), it has not been possible to ensure that, having regard to the arrangement as a whole, persons will not pay more to make Relevant Calls to the Practice Premises than they would to make equivalent calls to a Geographical Number, the Contractor must introduce a system under which if a caller

asks to be called back, the Contractor will do so at the Contractor's expense.

## **10 Clinical Reports & Co-operation**

10.1 Where the Contractor provides any clinical services under this Contract, other than under a private arrangement to a patient who is not on its List of Patients, it shall prepare a clinical report relating to the consultation and any treatment provided and shall, as soon as reasonably practicable, provide a copy of the clinical report to the Commissioner. The Commissioner shall send any clinical report received to either:

- 10.1.1 the person with whom the Patient is registered for the provision of Essential Services (or their equivalent) or their equivalent; or
- 10.1.2 if the person referred to in Clause 10.1.1 is not known to the Commissioner, Local Health Board, Health Board or Health and Social Services Board, in whose area the Patient is resident.

This clause 10.1 does not apply to Out of Hours Services to be provided by the Contractor.

10.2 The Contractor must take all reasonable steps to co-operate with other clinicians also providing clinical services to any Patient in the interests of providing an integrated pathway for a Patient.

10.3 Not used.

10.4 If the Contractor is not, pursuant to the Contract, providing to its Registered Patients or to persons whom it has accepted as Temporary Residents:

- 10.4.1 a particular Service; or
- 10.4.2 Out of Hours Services,

either at all or in respect of some periods or some services, the Contractor shall comply with the requirements specified in Clause 10.5.

- 10.5 The requirements referred to in Clause 10.4 are that the Contractor shall:
- 10.5.1 co-operate with any person responsible for the provision of that service or those services;
  - 10.5.2 comply with any reasonable request for information from such a person or from the Commissioner relating to the provision of that Service or those Services.
  - 10.5.3 in the case of Out of Hours Services:
    - (i) take reasonable steps to ensure that any Patient who contacts the Practice Premises during the Out of Hours Period is provided with information about how to obtain Services during that period,
    - (ii) ensure that the clinical details of all out of hours consultations received from the out of hours provider are reviewed by a clinician within the Practice on the same Working Day as those details are received by the Practice or, exceptionally, on the next Working Day,
    - (iii) ensure that any information requests received from the out of hours provider in respect of any out of hours consultations are responded to by a clinician within the practice on the same day as those requests are received by the Practice, or on the next Working Day,
    - (iv) take all reasonable steps to comply with any systems which the out of hours provider has in place to ensure the rapid, secure and effective transmission of Patient data in respect of out of hours consultations, and
    - (v) agree with the out of hours provider a system for the rapid, secure and effective transmission of



information about Registered Patients who, due to chronic disease or terminal illness, are predicted as more likely to present themselves for treatment during the Out of Hours Period.

Nothing in Clauses 10.4 and 10.5 shall require the Contractor to make itself available during the Out of Hours Period.

10.6 If the Contractor ceases to be required to provide to its Patients:

10.6.1 a particular Service; or

10.6.2 Out of Hours Services, either at all or in respect of some periods or some Services,

it shall comply with any reasonable request for information relating to the provision of that Service or those Services made by the Commissioner or by any person with whom the Commissioner intends to enter into a contract for the provision of such Services.

10.7 The Contractor shall be required to submit an Annual Report, on a date agreed with the Commissioner, but not more than 90 days after service commencement, and thereafter each anniversary which sets out how the Services will be delivered and local and national priorities met for the forthcoming 12 month period.

10.8 The Annual Report shall conform to the template set out in Schedule 6 Annex 1 Annual Report Template and Details.

10.9 The details as listed in Schedule 6, Annex 1 shall not be considered an exhaustive list of inclusions required in the Annual Report as required by the Commissioner. Annex 1 may be amended by the Commissioner on three (3) months' written notice to the Contractor.

## **11 Storage of Vaccines**

11.1 The Contractor shall ensure that:

11.1.1 all vaccines are stored in accordance with the manufacturer's instructions; and

- 11.1.2 all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that readings are taken on all Working Days. Such readings must be recorded in a maintenance log and an immediate response initiated (within agreed practice opening hours) if readings are outside the acceptable range. The maintenance log must be available for inspection at the relevant premises by the Commissioner at any time.

## **12 Infection Control**

- 12.1 The Contractor shall ensure that it has appropriate arrangements for infection control and decontamination, as reasonably determined by the Commissioner.

## **13 Persons who shall perform the Services**

- 13.1 The Contractor is required to comply with this Clause 13 in relation to all persons performing the Services.
- 13.2 Subject to Clause 13.3, no medical practitioner shall perform primary medical services under the Contract unless he is:
- 13.2.1 included in the Medical Performers List;
  - 13.2.2 not suspended from that list or from the Medical Register; and
  - 13.2.3 not subject to interim suspension under section 41A of the Medical Act 1983 (interim orders).
- 13.3 Clause 13.2.1 shall not apply in the case of:
- 13.3.1 a person who is provisionally registered under sections 15, 15A or 21 of the Medical Act 1983 acting in the course of his employment in a resident medical capacity in an Approved Medical Practice;

13.3.2 a GP Registrar who has applied to the Commissioner to have his name included in its Medical Performers List until either the Commissioner notifies him of its decision on that application, or the end of a period of three (3) months, starting with the date on which that GP Registrar begins a postgraduate medical education and training scheme necessary for the award of a CCT; or

13.3.3 a medical practitioner, who:

13.3.3.1 is not a GP Registrar;

13.3.3.2 is undertaking a programme of post-registration supervised clinical practice supervised by the General Medical Council (“a post-registration programme”);

13.3.3.3 has notified the Commissioner that he will be undertaking part or all of a post-graduate programme in England at least twenty-four (24) hours before commencing any part of that programme; and

13.3.3.4 has, with that notification, provided the Commissioner with evidence sufficient for it to satisfy itself that he is undertaking a post-registration programme,

but only in so far as any medical services that the medical practitioner performs constitute part of a post-registration programme.

13.4 No Health Care Professional other than one to whom Clauses 13.2 and 13.3 apply shall perform clinical services under the Contract unless he is registered with his relevant professional body and his registration is not currently suspended.

- 13.5 Where the registration of a Health Care Professional or, in the case of a medical practitioner, his inclusion in a Primary Care List is subject to conditions, the Contractor shall ensure compliance with those conditions insofar as they are relevant to the Contract.
- 13.6 No Health Care Professional shall perform any clinical services unless he has such clinical experience and training as are necessary to enable him properly to perform such services.
- 13.7 Before employing or engaging any person to assist it in the provision of the Services under the Contract, the Contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he is to be employed or engaged.
- 13.8 When considering the competence and suitability of any person for the purpose of Clause 13.7, the Contractor shall have regard, in particular, to:
- 13.8.1 that person's academic and vocational qualifications;
  - 13.8.2 his education and training; and
  - 13.8.3 his previous employment or work experience.
- 13.9 The Contractor shall notify the Commissioner as soon as possible in the event that any Health Care Professional is:
- 13.9.1 referred to the relevant professional body for alleged misconduct; or
  - 13.9.2 removed from the Relevant Register.
- 13.10 The Contractor may use the Commissioner's commissioned occupational health service (at its own cost) in order to allow any staff or other persons employed or engaged by it, to undergo medical screening, immunisation or testing prior to their appointment or undertaking any work in connection with the Services.
- 13.11 The Contractor shall ensure (at its own cost) that all staff undergo reasonable medical screening, examination or tests if requested by the

Commissioner at any time after their appointment and answer any question or supply any information pertaining to their health which the Commissioner may reasonably ask or require.

- 13.12 The Contractor will maintain detailed records of staff employed or engaged in providing the Services including details of names and place of duty and starting and finishing times, training performance and disciplinary action and any other information relating to the Contractor's obligations in this Clause 13 as may be reasonably required and these records will be available to the Commissioner on reasonable request.
- 13.13 The Contractor will employ or engage sufficient employees or persons to ensure that all of the Services are provided at all times and in all respects in complete conformity with the Service Specification. This will include, but not be limited to, the Contractor providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to contractual or statutory leave entitlements, sickness or voluntary absence.
- 13.14 The Contractor shall at all times provide a sufficient number of staff of a supervisory and management level to ensure that all persons or staff employed or engaged in providing the Services are at all times adequately supervised and managed and properly perform their duties. The Contractor shall ensure that such supervisory and management level staff are sufficiently skilled, trained and instructed with regard to all matters under the Contract, including without limitation the performance of the Services.
- 13.15 The Contractor shall ensure that its staff are provided with all necessary and appropriate support to facilitate them in developing career progression pathways.

## **14 Training**

- 14.1 The Contractor shall ensure that for any Health Care Professional who is:

- 14.1.1 performing clinical services under the Contract; or
- 14.1.2 employed or engaged to assist in the performance of such services,

there are in place arrangements for the purpose of maintaining and updating his skills and knowledge in relation to the services which he is performing or assisting in performing. The Commissioner may require the Contractor, where the Contractor is legally able to do so, to restrict or suspend the performance of any named health professional from performing services under this Contract until the requirements of this clause have been satisfied. For the avoidance of doubt any costs associated with the restriction or suspension must be met by the Contractor unless the contract sanction is successfully challenged by the Contractor through the Dispute Resolution Procedure.

- 14.2 The Contractor shall afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence in addition to the Contractor's obligations as to training set out in the Service Specification.

- 14.3 The Contractor must co-operate with the Secretary of State in the discharge of the duty under section 1F (Duty as to Education and Training) of the 2006 Act, or co-operate with Health Education England where Health Education England is discharging that duty by virtue of a direction under section 7 (Functions of Special Health Authorities) of the 2006 Act.

- 14.4 The Contractor will employ only such persons as are careful, qualified, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Contractor's expense) and carries out the Services with regard to :

- 14.4.1 the task or tasks that person has to perform;
- 14.4.2 all relevant provisions of the Contract and the Service Specification;

- 14.4.3 all relevant policies, rules, procedures and standards of the Commissioner (including any health and safety at work, harassment, discrimination and equal opportunities policies);
  - 14.4.4 the need for those working in a health services environment to observe the highest standards of hygiene, customer care, courtesy and consideration;
  - 14.4.5 the need to keep confidential all information howsoever acquired whether relating to the Trust and its business, or relating to patients, including but not limited to patient identity, clinical conditions and treatment;
  - 14.4.6 the need to provide a suitably high standard of customer care through both initial and thereafter periodic training both in customer care and in communicating with and supporting Patients to include responding to Patient feedback;
  - 14.4.7 the need to be aware of and understand and recognise Patients' social and cultural diversity, values and beliefs which may influence any decisions taken by Patients and how they want to receive care, treatment and support.
- 14.5 The adherence of the Contractor's staff to required standards of performance shall be routinely monitored and the Contractor shall promptly take such remedial action as may be required where such standards are not attained. The Contractor shall ensure that its staff employed or engaged in providing the Services receive an annual individual appraisal to include the implementation of professional development plans.

## **15 Appraisal and Assessment**

The Contractor shall ensure that any medical practitioner performing Services under the Contract participates in an appropriate appraisal

system and co-operates with the Commissioner in relation to the Commissioner's patient safety functions.

## **16 Arrangements for GP Registrars**

- 16.1 The Contractor shall only employ a GP Registrar subject to the conditions in Clause 16.2.
- 16.2 The conditions referred to in Clause 16.1 are that the Contractor shall not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services under the Contract or for which other staff assist them in the performance of those services.
- 16.3 Where the Contractor employs a GP Registrar, the Contractor must offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in directions given by the Secretary of State under sections 7 and 8 of the 2006 Act to Health Education England.

## **17 Notification Requirements in Respect of Specified Prescribers**

- 17.1 Where:
- 17.1.1 the Contractor employs or engages a person who is specified in Clause 17.2.5 whose functions will include prescribing;
  - 17.1.2 a party to the Contract is a person who is specified in Clause 17.2.5; or
  - 17.1.3 the functions of a person who is a person specified in Clause 17.2.5 and is a person whom the Contractor already employs or has already engaged are extended to include prescribing,

the Contractor shall notify the Commissioner within the period of seven



(7) days beginning with the date on which the Contractor employed or engaged the person, the party to the Contract (unless immediately before becoming such a party, the person fell under Clause 17.1.1), or the person's functions were extended.

17.2

Where:

- 17.2.1 the Contractor ceases to employ or engage a person who is specified in Clause 17.2.5 whose functions included prescribing in its practice;
- 17.2.2 a party to the Contract who is a person who is specified in Clause 17.2.5 ceases to be a party to the Contract; or
- 17.2.3 the functions of a person who is specified in Clause 17.2.5 whom the Contractor employs or engages in its practice are changed so that they no longer include prescribing in its practice; or
- 17.2.4 the Contractor becomes aware that a person who is specified in Clause 17.2.5 whom it employs or engages has been removed or suspended from the Relevant Register,

the Contractor shall notify the Commissioner by the end of the second Working Day after the day on which the event occurred.

17.2.5 The specified persons are:

- 17.2.5.1 a Chiropodist or Podiatrist Independent Prescriber;
- 17.2.5.2 an Independent Nurse Prescriber;
- 17.2.5.3 a Pharmacist Independent Prescriber;
- 17.2.5.4 a Physiotherapist Independent Prescriber; and
- 17.2.5.5 a Supplementary Prescriber.

17.3

The Contractor shall provide the following information when it notifies the Commissioner in accordance with Clause 17.1:

- 17.3.1 the person's full name;
  - 17.3.2 his professional qualifications;
  - 17.3.3 his identifying number which appears in the Relevant Register;
  - 17.3.4 the date on which his entry in the Relevant Register was annotated to the effect that he was qualified to order drugs, medicines and Appliances for Patients; and
  - 17.3.5 the date on which he was employed or engaged, if applicable, or the date on which one of his functions became to prescribe in its Practice.
- 17.4 The Contractor shall provide the following information when it notifies the Commissioner in accordance with Clause 17.2:
- 17.4.1 the person's full name;
  - 17.4.2 his identifying number which appears in the Relevant Register; and
  - 17.4.3 the date on which he ceased to carry out prescribing functions.

## **18 Signing of Documents**

- 18.1 In addition to any other requirements relating to such documents whether in the Contract or otherwise, the Contractor shall ensure that:
- 18.1.1 the documents specified in Clause 18.2 include:
    - 18.1.1.1 the clinical profession of the Health Care Professional who signed the document; and
    - 18.1.1.2 the name of the Contractor on whose behalf it is signed; and
  - 18.1.2 the documents specified in Clause 18.3, include the clinical profession of the Health Care Professional who signed the document.

- 18.2 The documents referred to in Clause 18.1.1 are:
- 18.2.1 certificates issued in accordance with Clause 47.1, unless regulations relating to particular certificates provide otherwise; and
  - 18.2.2 any other clinical documents, apart from:
    - 18.2.2.1 Home Oxygen Order Forms; and
    - 18.2.2.2 those documents specified in Clause 18.1.2.
- 18.3 The documents referred to in Clause 18.1.2 are Batch Issues, Prescription Forms and Repeatable Prescriptions.
- 18.4 The Contractor shall keep an up to date register of authorised signatories and shall promptly notify the Commissioner in the event of any changes from time to time.

## **19 Prescribing**

- 19.1 The Contractor shall ensure that any Prescription Form or Repeatable Prescriptions for drugs, medicines or Appliances issued or created by a Prescriber, any Home Oxygen Order Form issued by a Health Care Professional and any Listed Medicines Voucher issued by a Prescriber or any other person acting under the Contract complies as appropriate with the requirements in Clauses 19.3 to 28.3.
- 19.2 For the purposes of Clauses 19.1 to 28.3 drugs include contraceptive substances and Appliances include contraceptive appliances.
- 19.3 Subject to Clauses 19.3.3 and 19.3.4 and to Clauses 24 and 25 a Prescriber shall order any drugs, medicines or Appliances which are needed for the treatment of any Patient who is receiving treatment under the Contract by:
- 19.3.1 issuing to that Patient a Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription completed in accordance with Clause 19.5; or

19.3.2 where Clause 20.1 applies, creating and transmitting an Electronic Prescription,

and such a Non-Electronic Prescription Form, Non-Electronic Repeatable Prescription or Electronic Prescription shall not be used in any other circumstances.

19.3.3 A Health Care Professional shall order any Home Oxygen Services which are needed for the treatment of any Patient who is receiving treatment under the Contract by issuing a Home Oxygen Order Form.

19.3.4 During an outbreak of an illness for which a Listed Medicine may be used for treatment or for prophylaxis, if:

19.3.4.1 the Secretary of State or the Commissioner has made arrangements for the distribution of a Listed Medicine free of charge;

19.3.4.2 those arrangements contain criteria set out in a protocol which enable persons who are not Prescribers to identify the symptoms of, and whether there is a need for treatment or prophylaxis of, that disease;

19.3.4.3 a person acting on behalf of the Contractor, who is not a Prescriber but who is authorised to order Listed Medicines by the Commissioner, has applied the criteria referred to in paragraph 19.3.4.2 to any Patient who is receiving treatment under the Contract; and

19.3.4.4 having applied the criteria, the person acting on behalf of the Contractor has concluded that the Listed Medicine is needed for treatment or prophylaxis of that Patient,

the person acting on behalf of the Contractor must order that Listed Medicine by using a Listed Medicines Voucher, which the person ordering the Listed Medicine must sign.

- 19.4 A Prescriber may order drugs, medicines or Appliances on a Repeatable Prescription only where the drugs, medicines or Appliances are to be provided more than once.
- 19.5 In issuing any Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription the Prescriber shall sign the Prescription Form or Repeatable Prescription in ink with his initials and surname, or his forenames and surname, in his own handwriting and not by means of a stamp, and shall so sign only after particulars of the order have been inserted in the Prescription Form or Repeatable Prescription, and:
- 19.5.1 the Prescription Form or Repeatable Prescription shall not refer to any previous Prescription Form or Repeatable Prescription; and
- 19.5.2 a separate Prescription Form or Repeatable Prescription shall be used for each Patient, except where a bulk prescription is issued for a school or institution under Clauses 28.1 to 28.3; and
- 19.5.3 a Home Oxygen Order Form shall be signed by a Health Care Professional.
- 19.6 Where a Prescriber orders the drug buprenorphine or diazepam or a drug specified in Schedule 2 to the Misuse of Drugs Regulations 2001 (controlled drugs to which regulations 14, 15, 16, 18, 19, 20, 21, 23, 26 and 27 of those regulations apply) for supply by instalments for treating addiction to any drug specified in that Schedule, he shall:
- 19.6.1 use only the Non-Electronic Prescription Form provided specially for the purposes of supply by instalments;
- 19.6.2 specify the number of instalments to be dispensed and the interval between each instalment; and

- 19.6.3        order only such quantity of the drug as will provide treatment for a period not exceeding fourteen (14) days.
- 19.7        The Non-Electronic Prescription Form provided specially for the purpose of supply by instalments shall not be used for any purpose other than ordering drugs in accordance with Clause 19.6.
- 19.8        In a case of urgency a Prescriber may request a Chemist to dispense a drug or medicine before a Prescription Form or Repeatable Prescription is issued or created, but only if:
  - 19.8.1        that drug or medicine is not a Scheduled Drug;
  - 19.8.2        that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001; and
  - 19.8.3        he undertakes to furnish the Chemist, within seventy two (72) hours, with a Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription completed in accordance with Clause 19.5 or transmit to the Electronic Prescription Service within seventy-two (72) hours an electronic prescription.
- 19.9        In a case of urgency a Prescriber may request a Chemist to dispense an Appliance before a Prescription Form or Repeatable Prescription is issued or created, but only if:
  - 19.9.1        that Appliance does not contain a Scheduled Drug or a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 5 to the Misuse of Drugs Regulations 2001;
  - 19.9.2        in the case of a Restricted Availability Appliance, the Patient is a person, or it is for a purpose, specified in the Drug Tariff; and

19.9.3 he undertakes to furnish the Chemist, within seventy two (72) hours, with a Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription completed in accordance with Clause 19.5 or transmit to the Electronic Prescription Service within seventy-two (72) hours an Electronic Prescription.

19.10 When prescribing in relation to pandemic influenza both parties shall comply with the National Health Service (Prescribing and Charging Amendments Relating to Pandemic Influenza) Regulations 2009.

## **20 Electronic Prescriptions**

20.1 A Prescriber may only order drugs, medicines or Appliances by means of an Electronic Prescription if:

20.1.1 the Commissioner authorises the Contractor to use the Electronic Prescription Service;

20.1.2 the Patient to whom the prescription relates has:

- (i) nominated one or more Dispensers;
- (ii) confirmed that he intends to use that Dispenser (or one of them) for the purposes of obtaining the drugs, medicines or Appliances ordered on the Electronic Prescription in question; and
- (iii) consents to the use of an Electronic Prescription on the particular occasion; and

20.1.3 the prescription is not:

- (i) for a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 4 or 5 to the Misuse of Drugs Regulations 2001;
- (ii) for supply by instalments under Clause 19.6; or
- (iii) a bulk prescription issued for a school or institution

under Clause 28.

- 20.2 A Health Care Professional may not order Home Oxygen services by means of an Electronic Prescription.
- 20.3 In relation to a Patient who is a Child or an adult who lacks the capacity to nominate a dispenser, Clause 20.1.2 shall apply as if the reference to the Patient to whom the prescription relates included a reference to:
  - 20.3.1 in the case of a Child, that Patient's parent or other person referred to in clause 31.11; or
  - 20.3.2 in the case of an adult, that Patient's relative or primary carer, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.
- 20.4 A Prescriber who orders drugs, medicines or Appliances by means of an Electronic Prescription shall:
  - 20.4.1 in the case of an Electronic Repeatable Prescription, issue the Patient with a form provided by the Commissioner for the purpose of recording details of that Electronic Repeatable Prescription and linked to that Electronic Repeatable Prescription by a number contained in the form; and
  - 20.4.2 in the case of an Electronic Prescription Form, issue the Patient, if he so requests, with a written record of the prescription which has been created.

## **21 Nomination of Dispensers for the Purpose of Electronic Prescriptions**

- 21.1 A Contractor which is authorised to use the Electronic Prescription Service for its Patients must enter into the particulars relating to that Patient which is held in the Patient Demographic Service which is operated by the Information Centre for Health and Social Care:



21.1.1 where he does not have a Nominated Dispenser, the Dispenser chosen by the Patient; and

21.1.2 where he does have a Nominated Dispenser:

21.1.2.1 a replacement Dispenser; or

21.1.2.2 a further Dispenser,

chosen by that Patient.

21.2 Clause 21.1.2.2 shall not apply if the number of Nominated Dispensers would thereby exceed the maximum number permitted by the Electronic Prescription Service.

21.3 An application made under Clause 21.1 may be made:

21.3.1 on behalf of any Child:

21.3.1.1 by either parent, or in the absence of both parents, the guardian or other adult who has care of the Child,

21.3.1.2 by a person duly authorised by a local authority to whose care the Child has been committed under the Children Act 1989, or

21.3.1.3 by a person duly authorised by a voluntary organisation by which the Child is being accommodated under the provisions of that Act; or

21.3.2 on behalf of any adult who lacks the capacity to make such an application, or to authorise such an application to be made on their behalf, by a relative or primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.

21.4 The Contractor:

(a) shall not seek to persuade a Patient to nominate a Dispenser

recommended by the Prescriber or the Contractor; and

- (b) shall, if asked by the Patient to recommend a Chemist to whom he might nominate as his Dispenser, provide the Patient with the list of all the Chemists in the area who provide an Electronic Prescription Service as given to the Contractor by the Commissioner.

## **22 Repeatable Prescribing Services**

22.1 The Contractor may only provide Repeatable Prescribing Services to any person on its List of Patients if it satisfies the conditions in Clause 22.2 and it serves notice on the Commissioner in accordance with the terms of Clauses 22.3 and 22.4.

22.2 The Conditions referred to in Clause 22.1 are:

22.2.1 the Contractor has access to computer systems and software which enable it to issue Non-Electronic Repeatable Prescriptions and Batch Issues; and

22.2.2 the Practice Premises at which the Repeatable Prescribing Services are to be provided are located in the local authority area in which there is also located the premises of at least one Chemist who has undertaken to provide, or has entered into an arrangement to provide, Repeat Dispensing Services.

22.3 The notification referred to in Clause 22.1 is a notification, in writing, by the Contractor to the Commissioner that it:

22.3.1 wishes to provide Repeatable Prescribing Services;

22.3.2 intends to begin to provide those services from a specified date; and

22.3.3 satisfies the conditions in Clause 22.2.

- 22.4 The date specified by the Contractor pursuant to Clause 22.3.2 must be at least ten (10) days after the date on which the notification specified in Clause 22.1 is given.
- 22.5 Nothing in this clause requires a Contractor or Prescriber to provide Repeatable Prescribing Services to any person.
- 22.6 A Prescriber may only provide Repeatable Prescribing Services to a person on a particular occasion if:
- 22.6.1 that person has agreed to receive such services on that occasion; and
  - 22.6.2 the Prescriber considers that it is clinically appropriate to provide such services to that person on that occasion.
- 22.7 The Contractor may not provide Repeatable Prescribing Services to any Patient of its whom any of the persons specified in Clause 22.8, is authorised or required by the Commissioner in accordance with arrangements made under section 126 (Arrangements for Pharmaceutical Services) and section 129 (Regulations as to Pharmaceutical Services) of the 2006 Act.
- 22.8 The persons referred to in Clause 22.7 are:
- 22.8.1 a medical practitioner who is a party to the Contract
  - 22.8.2 in the case of a Contract with a company, any medical practitioner who is both a legal and beneficial shareholder in that body; or
  - 22.8.3 any medical practitioner employed by the Contractor.

## **23 Repeatable Prescriptions**

- 23.1 A Prescriber who issues a Non-Electronic Repeatable Prescription must at the same time issue the appropriate number of Batch Issues.
- 23.2 Where a Prescriber wishes to make any change to the type, quantity, strength or dosage of drugs, medicines or Appliances ordered on a person's Repeatable Prescription it must:

- 23.3 in the case of a Non-Electronic Repeatable Prescription:
- 23.3.1 notify the person; and
  - 23.3.2 make reasonable efforts to notify the Chemist providing Repeat Dispensing Services to that person,
- that the original Repeatable Prescription should no longer be used to obtain or provide Repeat Dispensing Services and make arrangements for a replacement Repeatable Prescription to be issued to that person; or
- 23.4 in the case of an Electronic Repeatable Prescription:
- 23.4.1 arrange with the Electronic Prescription Service for the cancellation of the original Repeatable Prescription; and
  - 23.4.2 create a replacement Electronic Repeatable Prescription relating to that person and notify him that he has done so.
- 23.5 A Prescriber who has created an Electronic Repeatable Prescription for a person must as soon as practicable arrange with the Electronic Prescription Service for its cancellation if, before the expiry of that prescription:
- 23.5.1 he considers that it is no longer appropriate or safe for that person to receive the drugs, medicines or Appliances ordered on his Electronic Repeatable Prescription or no longer appropriate or safe for him to continue to receive Repeatable Prescribing Services;
  - 23.5.2 he has issued the person with a Non-Electronic Repeatable Prescription in place of the Electronic Repeatable Prescription; or
  - 23.5.3 it comes to his notice that that person has been removed from the List of Patients of the Contractor on whose behalf the prescription was issued.

- 23.6 Where a Prescriber has cancelled a person's Electronic Repeatable Prescription in accordance with Clause 23.5 he must, as soon as practicable, notify that person.
- 23.7 A Prescriber who has issued a Non-Electronic Repeatable Prescription in respect of a person must, as soon as practicable, make reasonable efforts to notify the Chemist that that Repeatable Prescription should no longer be used to provide Repeat Dispensing Services to that person, if, before the expiry of that Repeatable Prescription:
- 23.7.1 he considers that it is no longer appropriate or safe for that person to receive the drugs, medicines or Appliances ordered on his Repeatable Prescription or no longer appropriate or safe for him to continue to receive Repeatable Prescribing Services;
  - 23.7.2 he issues or creates a further Repeatable Prescription in respect of the person to replace the original Repeatable Prescription other than in the circumstances referred to in Clause 22.3 (for example, because the person wishes to obtain the drugs, medicines or Appliances from a different Chemist); or
  - 23.7.3 it comes to his notice that that person has been removed from the List of Patients of the Contractor on whose behalf the prescription was issued.
- 23.8 Where the circumstances in Clauses 23.7.1 to 23.7.3 apply, the Prescriber must as soon as practicable notify the person on whose behalf the Non-Electronic Repeatable Prescription was issued that that Repeatable Prescription should no longer be used to obtain Repeat Dispensing Services.

## **24 Restrictions on Prescribing by Medical Practitioners**

24.1 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Listed Medicines Voucher, a Prescription Form or Repeatable Prescription a drug, medicine or other substance specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being drugs, medicines or other substances which may not be ordered for Patients in the provision of medical services under a general medical services contract but may, subject to Clause 49.1.1.2, prescribe such a drug, medicine or other substance for that Patient in the course of that treatment under a private arrangement.

24.2 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Listed Medicines Voucher, a Prescription Form or Repeatable Prescription a drug, medicine or other substance specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes unless:

24.2.1 that Patient is a person of the specified description;

24.2.2 that drug, medicine or other substance is prescribed for that Patient only for the specified purpose; and

24.2.3 if the order is on a Prescription Form, the practitioner includes:

(i) the reference "SLS", or

(ii) if the order is under arrangements made by the Secretary of State or the Commissioner for the distribution of a Listed Medicine free of charge, the reference "ACP",

but may, subject to Clause 49.1.1.2, prescribe such a drug, medicine or other substance for that Patient in the course of that treatment under a private arrangement.

- 24.3 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Repeatable Prescription a Restricted Availability Appliance unless:
- 24.3.1 the Patient is a person, or it is for a purpose, specified in the applicable Drug Tariff; and
  - 24.3.2 the practitioner includes on the Prescription Form with the reference “SLS”;
- but may, subject to Clause 49.1.1.2, prescribe such an Appliance for that Patient in the course of that treatment under a private arrangement.
- 24.4 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Repeatable Prescription a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 4 or 5 of the Misuse of Drugs Regulations 2001, but may, subject to Clause 49.1.1.2, prescribe such a drug for that Patient in the course of that treatment under a private arrangement.

## **25 Restrictions on Prescribing by Supplementary Prescribers**

- 25.1 Where the Contractor employs or engages a Supplementary Prescriber and that person’s functions include prescribing, the Contractor shall have arrangements in place to secure that a Supplementary Prescriber will:
- 25.1.1 issue or create a prescription for a prescription only medicine;
  - 25.1.2 administer a prescription only medicine for parenteral administration; or
  - 25.1.3 give directions for the administration of a Prescription Only Medicine for parenteral administration,

as a Supplementary Prescriber only under the conditions set out in Clause 25.2.

25.2 The conditions referred to in Clause 25.1 are that:

25.2.1 the person satisfies the applicable conditions set out in Regulation 215 of the Human Medicines Regulations 2012 (prescribing and administration by Supplementary Prescribers), unless those conditions do not apply by virtue of any of the exemptions set out in the subsequent provisions of those Regulations;

25.2.2 the drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under a general medical services contract;

25.2.3 the drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes unless:

25.2.3.1 the Patient is a person of the specified description;

25.2.3.2 the medicine is prescribed for that Patient only for the specified purposes; and

25.2.3.3 if the Supplementary Prescriber is issuing or creating on a Prescription Form, the prescriber includes on the Prescription Form the reference "SLS" or, in the case of a Listed Medicine ordered under arrangements made by the Secretary of State or the Commissioner



for the medicine's distribution free of charge,  
the reference "ACP".

## **26 Arrangements for Supplementary Prescribers**

26.1 Where the functions of a Supplementary Prescriber include prescribing, the Contractor shall have arrangements in place to secure that that person will only issue or create a prescription for an Appliance or a medicine which is not a prescription only medicine as a Supplementary Prescriber under the conditions set out in Clause 27.

## **27 Conditions applying to Clause 26**

The conditions referred to in Clause 26 are that:

- 27.1 the Supplementary Prescriber acts in accordance with a clinical management plan which is in effect at the time he acts and which contains the following particulars:
- 27.1.1 the name of the Patient to whom the plan relates;
  - 27.1.2 the illness or conditions which may be treated by the Supplementary Prescriber;
  - 27.1.3 the date on which the plan is to take effect, and when it is to be reviewed by the medical practitioner or dentist who is a party to the plan;
  - 27.1.4 reference to the class or description of medicines or types of Appliances which may be prescribed or administered under the plan;
  - 27.1.5 any restrictions or limitations as to the strength or dose of any medicine which may be prescribed or administered under the plan, and any period of administration or use of any medicine or Appliance which may be prescribed or administered under the plan;

- 27.1.6 relevant warnings about known sensitivities of the Patient to, or known difficulties of the Patient with, particular medicines or Appliances;
- 27.1.7 the arrangements for notification of:
  - 27.1.7.1 suspected or known adverse reactions to any medicine which may be prescribed or administered under the plan, and suspected or known adverse reactions to any other medicine taken at the same time as any medicine prescribed or administered under the plan; and
  - 27.1.7.2 incidents occurring with the Appliance which might lead, might have led or has led to the death or serious deterioration of state of health of the Patient; and
  - 27.1.7.3 the circumstances in which the Supplementary Prescriber should refer to, or seek the advice of, the medical practitioner or dentist who is a party to the plan;
- 27.2 he has access to the health records of the Patient to whom the plan relates which are used by any medical practitioner or dentist who is a party to the plan;
- 27.3 if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under the Contract;
- 27.4 if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug,

medicine or other substance which can only be ordered for specified Patients and specified purposes unless:

- 27.4.1 the Patient is a person of the specified description;
  - 27.4.2 the medicine is prescribed for that Patient only for the specified purposes; and
  - 27.4.3 when issuing or creating a prescription he includes on the Prescription Form, the reference "SLS";
- 27.5 if it is a prescription for an Appliance, the Appliance is listed in Part IX of the Drug Tariff; and
- 27.6 if it is a prescription for a Restricted Availability Appliance:
- 27.6.1 the Patient is a person of a description mentioned in the entry in Part IX of the Drug Tariff in respect of that Appliance;
  - 27.6.2 the Appliance is prescribed only for the purposes specified in respect of that person in that entry; and
  - 27.6.3 when issuing or creating a prescription he includes on the prescription form the reference "SLS".
- 27.7 In Clause 27.1 "clinical management plan" means a written plan (which may be amended from time to time) relating to the treatment of an individual Patient agreed by:
- 27.7.1 the Patient to whom the plan relates;
  - 27.7.2 the medical practitioner or dentist who is a party to the plan; and
  - 27.7.3 any Supplementary Prescriber who is to prescribe, give directions for administration or administer under the plan.

## **28 Bulk Prescribing**

- 28.1 Where:

- 28.1.1 the Contractor is responsible under the Contract for the treatment of ten (10) or more persons in a school or other institution in which at least twenty (20) persons normally reside; and
- 28.1.2 a Prescriber orders, for any two (2) or more of those persons for whose treatment the Contractor is responsible, drugs, medicines or Appliances to which this Clause 28 applies,

the Prescriber may use a single Non-Electronic Prescription Form for the purpose.

- 28.2 Where a Prescriber uses a single Non-Electronic Prescription Form for the purpose mentioned in Clause 28.1.2, he shall (instead of entering on the form the names of the persons for whom the drugs, medicines or Appliances are ordered) enter on the form:

- 28.2.1 the name of the school or institution in which those persons reside; and
- 28.2.2 the number of persons residing there for whose treatment the Contractor is responsible.

- 28.3 Clauses 28 applies to any drug, medicine or Appliance which can be supplied as part of pharmaceutical services or Local Pharmaceutical Services and which:

- 28.3.1 in the case of a drug or medicine, is not a product of a description or class which is for the time being specified in an order made under section 58(1) of the Medicines Act 1968 (medicinal products on prescription only); or
- 28.3.2 in the case of an Appliance, does not contain such a product.

## **29 Excessive Prescribing**

- 29.1 The Contractor shall not prescribe drugs, medicines or Appliances whose cost or quantity, in relation to any Patient, is, by reason of the character of the drug, medicine or Appliance in question, in excess of that which was reasonably necessary for the proper treatment of that Patient.
- 29.2 In considering whether the Contractor has breached its obligations under Clause 29.1 the Commissioner may, if the Contractor consents, seek the views of the Local Medical Committee (if any) for the area in which the Contractor provides the Services.

## **30 Provision of Drugs, Medicines and Appliances for Immediate Treatment or Personal Administration**

- 30.1 Subject to Clause 30.2, the Contractor:
- 30.1.1 shall provide to a Patient any drug, medicine or Appliance, not being a Scheduled Drug, where such provision is needed for the immediate treatment of that Patient before a provision can otherwise be obtained; and
  - 30.1.2 may provide to a Patient any drug, medicine or Appliance, not being a Scheduled Drug, which a person employed or engaged by the Contractor personally administers or applies to that Patient,
- but shall, in either case, provide a Restricted Availability Appliance only if it is for a person or a purpose specified in the Drug Tariff.
- 30.2 Nothing in Clause 30.1 authorises a person to supply any drug or medicine to a Patient otherwise than in accordance with Part 3 of the Medicines Act 1968, or any regulations or orders made under that Act.

## **31 Patients**

### **Persons to whom Services are to be provided**

31.1 Except where specifically stated otherwise in respect of particular services, the Contractor shall provide Services under the Contract to:

- 31.1.1 Registered Patients;
- 31.1.2 Temporary Residents;
- 31.1.3 persons to whom the Contractor is required to provide emergency or immediately necessary treatment;
- 31.1.4 any person for whom the Contractor is responsible under regulation 30 of the GMS Contracts Regulations;
- 31.1.5 any other person to whom the Contractor is responsible under arrangements made with another Contractor; and
- 31.1.6 any other person to whom the Contractor has agreed to provide Services under the Contract.

### **Patient Registration Area**

31.2 The Contractor is responsible for the provision of primary healthcare services in the Patient Registration Area which is defined in Annex 1 of Schedule 2.

31.3 Where a Patient:

- 31.3.1 moves into the Outer Boundary Area to reside; and
- 31.3.2 wishes to remain on the Contractor's List of Patients,

the Patient may remain on the List of Patients if the Contractor so agrees, notwithstanding that the Patient no longer resides in the Patient Registration Area.

31.4 Where a Patient remains on the Contractor's List of Patients as a consequence of Clause 31.3, the Parties shall treat the Outer Boundary Area as part of the Patient Registration Area for the purposes of the application of any other terms and conditions of the Contract in respect of that Patient.

### **List of Patients**

- 31.5 The Contractor's List of Patients is open.
- 31.6 Not used.
- 31.7 The Commissioner shall prepare and keep up to date a List of the Patients:
- 31.7.1 who have been accepted by the Contractor for inclusion in its List of Patients under Clauses 31.8 to 31.12 and who have not subsequently been removed from that list under Clauses 31.23 to 31.58; and
  - 31.7.2 who have been assigned to the Contractor under Clauses 31.101, to 31.104 and whose assignment has not subsequently been rescinded.

### **Application for inclusion in a List of Patients**

- 31.8 The Contractor may, if its List of Patients is open, accept an application for inclusion in its List of Patients made by or on behalf of any person, whether or not resident in the Patient Registration Area or included, at the time of that application, in the List of Patients of another Contractor or Contractor of primary medical services.
- 31.9 The Contractor may, if its List of Patients is closed, only accept an application for inclusion in its List of Patients from a person who is an Immediate Family Member of a Registered Patient whether or not resident in the Patient Registration Area or included, at the time of that application, in the List of Patients of another provider of primary medical services.
- 31.10 Subject to Clause 31.11, an application for inclusion in the Contractor's List of Patients shall be made by delivering to the Practice Premises a medical card or an application signed (in either case) by the applicant or person authorised by the applicant to sign on his behalf.
- 31.11 An application may be made:
- 31.11.1 on behalf of any Child:

- 31.11.1.1 by either parent, or in the absence of both parents, the guardian or other adult who has care of the Child;
    - 31.11.1.2 by a person duly authorised by a local authority to whose care the Child has been committed under the Children Act 1989; or
    - 31.11.1.3 by a person duly authorised by a voluntary organisation by which the Child is being accommodated under the provisions of that Act; or
  - 31.11.2 on behalf of any adult who lacks the capacity to make such an application, or to authorise such an application to be made on their behalf, by a relative of that person, the primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.
- 31.12 Where the Contractor has accepted an application for inclusion in its List of Patients, it shall:
  - 31.12.1 notify the Patient (or, in the case of a Child or an adult who lacks capacity, the person who made the application on their behalf) of the Patient's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
  - 31.12.2 record in writing any such preference expressed by or on behalf of the Patient.

### **Temporary Residents**

- 31.13 The Contractor may, if its List of Patients is open, accept a person as a Temporary Resident provided it is satisfied that the person is:



- 31.13.1 temporarily resident away from his normal place of residence and is not being provided with Essential Services (or their equivalent) under any other arrangement in the locality where he is temporarily residing; or
- 31.13.2 moving from place to place and not for the time being resident in any place.
- 31.14 For the purposes of Clause 31.13, a person shall be regarded as temporarily resident in a place if, when he arrives in that place, he intends to stay there for more than twenty four (24) hours but not more than three (3) months.
- 31.15 Where the Contractor wishes to terminate its responsibility for a person accepted as a Temporary Resident before the end of three (3) months or such shorter period for which it had agreed to accept him as a Patient, the Contractor shall notify the Patient either orally or in writing and its responsibility for that person shall cease seven (7) days after the date on which the notification was given.
- 31.16 At the end of three (3) months, or on such earlier date as its responsibility for the Patient has come to an end, the Contractor shall notify the Commissioner in writing of any person whom it accepted as a Temporary Resident.

**Refusal of applications for inclusion in the List of Patients or for acceptance as a Temporary Resident**

- 31.17 The Contractor shall only refuse an application made under Clauses 31.8 to 31.16 if it has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.
- 31.18 The reasonable grounds referred to in Clause 31.17 shall, in the case of applications made under Clauses 31.8 to 31.12 include the ground that the applicant does not live in the Patient Registration Area, or lives in the Outer Boundary Area.

- 31.19 If the Contractor refuses an application made under Clauses 31.8 to 31.1.6, it shall, within fourteen (14) days of its decision, notify the applicant (or, in the case of a Child or an adult who lacks capacity, the person making the application on their behalf) in writing of the refusal and the reason for it.
- 31.20 The Contractor shall keep a written record of refusals of applications made under Clauses 31.8 to 31.12 and of the reasons for them and shall make this record available to the Commissioner on request.

### **Patient preference of practitioner**

- 31.21 Where the Contractor has accepted an application for inclusion in its List of Patients, it shall:
- 31.21.1 notify the Patient (or, in the case of a Child or an adult who lacks capacity, the person making the application on their behalf) of the Patient's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
  - 31.21.2 record in writing any such preference expressed by or on behalf of the Patient.
- 31.22 Not used.

### **Removals from the list at the request of the Patient**

- 31.23 The Contractor shall notify the Commissioner in writing of any request for removal from its List of Patients received from a Registered Patient.
- 31.24 Where the Commissioner receives notification from the Contractor under Clause 31.23, or receives a request from the Patient to be removed from the Contractor's List of Patients, it shall remove that person from the Contractor's List of Patients.
- 31.25 A removal under Clause 31.24 shall take effect:

- 31.25.1 on the date on which the Commissioner receives notification of the registration of the person with another provider of Essential Services (or their equivalent); or
  - 31.25.2 fourteen (14) days after the date on which the notification or request made under Clauses 31.23 or 31.24 respectively is received by the Commissioner,
- whichever is the sooner.

31.26 The Commissioner shall, as soon as practicable, notify in writing:

- 31.26.1 subject to Clause 31.27, the Patient; and
- 31.26.2 the Contractor

that the Patient's name will be or has been removed from the Contractor's List of Patients on the date referred to in Clause 31.25.

31.27 In Clauses 31.26, 31.28.2, 31.35.1, 31.41, 31.42, 31.47 31.54 and 31.61 a reference to a request received from, or advice, information or notification required to be given to, a Patient shall include a request received from or advice, information or notification required to be given to:

- 31.27.1 in the case of a Patient who is a Child, a parent or other person referred to in Clause 31.11; or
- 31.27.2 in the case of an adult Patient who lacks the capacity to make the relevant request or receive the relevant advice, information or notification, a relative of that person, the Primary Carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.

### **Removals from the list at the request of the Contractor**

31.28 Subject to Clauses 31.36 to 31.43, where the Contractor has reasonable grounds for wishing a Patient to be removed from its List of

Patients which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor shall:

31.28.1        notify the Commissioner in writing that it wishes to have the Patient removed; and

31.28.2        subject to Clause 31.29, notify the Patient in writing of its specific reasons for requesting removal.

31.29        Where the circumstances of the removal are such that it is not appropriate for a more specific reason to be given, and in the reasonable opinion of the Contractor, there has been a breakdown of trust between the Patient and the Contractor, the reason given under Clause 31.28 may consist of a statement that there has been an irrevocable breakdown in the relationship between the Patient and the Contractor.

31.30        Before the Contractor can request a removal in accordance with Clause 31.28, it shall, except where the reason for removal relates to a change of address, issue a warning to the Patient that he is at risk of removal unless:

31.30.1        it is not reasonably practicable for it to do so; or

31.30.2        it has reasonable grounds for believing that the issue of such a warning would be harmful to the physical or mental health of the Patient or would put at risk the safety of the Contractor, or other persons.

31.31        The Contractor shall record in writing the date of any warning given in accordance with Clause 31.30 or the reason why no such warning was given.

31.32        The Contractor shall keep a written record of removals under Clause 31.28 which shall include the reason for removal given to the Patient, the circumstances of the removal and in cases where Clause 31.29 applies, the grounds for a more specific reason not being appropriate,

and the Contractor shall make this record available to the Commissioner on request.

31.33 A removal requested in accordance with Clause 31.28 shall, subject to Clause 31.34, take effect from the date on which the person is registered with another provider of Essential Services (or their equivalent), or the eighth day after the Commissioner receives the notice, whichever is the sooner.

31.34 Where, on the date on which the removal would take effect under Clause 31.33, the Contractor is treating the Patient at intervals of less than seven (7) days, the Contractor shall inform the Commissioner in writing of that fact and the removal shall take effect on the eighth (8th) day after the Commissioner receives notification from the Contractor that the person no longer needs such treatment, or on the date on which the Board receives notification that the person is registered with another provider of Essential Services (or their equivalent), whichever is the sooner.

31.35 The Commissioner shall notify in writing:

31.35.1 subject to Clause 31.28, the Patient; and

31.35.2 the Contractor,

that the Patient's name has been or will be removed from the Contractor's List of Patients on the date referred to in Clause 31.33 or 31.34.

### **Removal of violent Patients from the list**

31.36 Where the Contractor wishes a Patient to be removed from its List of Patients with immediate effect on the grounds that:

31.36.1 the Patient has committed an act of violence against any of the persons specified in Clause 31.37 or behaved in such a way that any such person has feared for his safety; and

31.36.2 it has reported the incident to the police,

the Contractor shall notify the Commissioner in accordance with Clause 31.37.

31.37 The persons referred to in Clause 31.36 are:

31.37.1 a medical practitioner;

31.37.2 in the case of a Contract with a partnership, any partner in that partnership;

31.37.3 in the case of a Contract with a company, any legal and beneficial owner of shares in that company;

31.37.4 any member of the Contractor's staff;

31.37.5 any person employed or engaged by the Contractor to perform or assist in the performance of Services under the Contract; or

31.37.6 any other person present on the Practice Premises or in the place where the attendance of the medical practitioner or other Health Care Professional occurs.

31.38 Notification under Clause 31.36 may be given by any means including telephone or fax but if not given in writing such notification shall subsequently be confirmed in writing within seven (7) days (and for this purpose a faxed notification is not a written one).

31.39 The Commissioner shall acknowledge in writing receipt of a request from the Contractor under Clause 31.36.

31.40 A removal requested in accordance with Clause 31.36 shall take effect at the time the Contractor makes the telephone call to the Commissioner, or sends or delivers the notification to the Commissioner.

31.41 Where, pursuant to Clauses 31.36 to 31.40, the Contractor has notified the Commissioner that it wishes to have a Patient removed from its List of Patients with immediate effect, it shall, subject to Clause 31.41, inform the Patient concerned unless:

- 31.41.1 it is not reasonably practicable for it to do so; or
- 31.41.2 it has reasonable grounds for believing that the issue of such a warning would be harmful to the physical or mental health of the Patient or would put at risk the safety of the Contractor or other persons.

31.42 Where the Commissioner has removed a Patient from the Contractor's List of Patients in accordance with Clause 31.40 it shall, subject to Clause 31.37, give written notice of the removal to that Patient.

31.43 Where a Patient is removed from the Contractor's List of Patients in accordance with Clauses 31.36 to 31.42, the Contractor shall record in the Patient's medical records that the Patient has been removed under this Clause and the circumstances leading to his removal.

### **Removals from the list by the Commissioner**

31.44 The Commissioner must remove a Patient from the Contractor's List of Patients if that Patient has subsequently been registered with another provider of Essential Services (or their equivalent) within England, or it has received notice from a Health Board, a Local Health Board or a Health and Social Services Board that the Patient has subsequently been registered with a provider of Essential Services (or their equivalent) outside England.

31.45 A removal in accordance with Clause 31.44 shall take effect on the date on which notification of acceptance by the new provider was received or with the consent of the Commissioner, on such other date as has been agreed between the Contractor and the new provider.

31.46 The Commissioner shall notify the Contractor in writing of persons removed from its List of Patients under Clause 31.44.

### **Removals from list of patients who have moved**

31.47 Subject to Clause 31.48, where the Commissioner is satisfied that a person on the Contractor's List of Patients no longer resides in the

Patient Registration Area, the Commissioner shall, subject to Clause 31.37:

- 31.47.1 inform that Patient and the Contractor that the Contractor is no longer obliged to visit and treat the Patient;
- 31.47.2 advise the Patient either to obtain the Contractor's agreement to the continued inclusion of the Patient on its List of Patients or to apply for registration with another provider of Essential Services (or their equivalent); and
- 31.47.3 inform the Patient that if, after the expiration of thirty (30) days from the date of the letter of advice referred to in Clause 31.47.2, he has not acted in accordance with the advice and informed it accordingly, the Commissioner will remove him from the Contractor's List of Patients.

31.48 If, at the expiration of the period of thirty (30) days referred to in Clause 31.47.3, the Commissioner has not been notified of the action taken, it shall remove the Patient from the Contractor's List of Patients and, subject to Clause 31.37, inform him and the Contractor accordingly.

31.49 Where the address of a Patient who is on the Contractor's List of Patients is no longer known to the Commissioner, the Commissioner shall:

- 31.49.1 give to the Contractor notice in writing that it intends, at the end of the period of six (6) months commencing with the date of the notice, to remove the Patient from the Contractor's List of Patients; and
- 31.49.2 at the end of that period, remove the Patient from the Contractor's List of Patients unless, within that period, the Contractor satisfies the Commissioner that it is still responsible for providing Essential Services to that Patient.

**Removal from the list of patients absent from the United Kingdom etc**



- 31.50 The Commissioner shall remove a Patient from the Contractor's List of Patients where it receives notification that that Patient:
- 31.50.1 intends to be away from the United Kingdom for a period of at least three (3) months;
  - 31.50.2 is in the Armed Forces of the Crown (except in the case of a patient to whom clauses 31.142 to 31.146 apply);
  - 31.50.3 is serving a prison sentence of more than two (2) years or sentences totalling in the aggregate more than that period;
  - 31.50.4 has been absent from the United Kingdom for a period of more than three (3) months; or
  - 31.50.5 has died.
- 31.51 A removal in accordance with Clause 31.50 shall take effect:
- 31.51.1 in the cases referred to in Clauses 31.50.1 to 31.50.3 from the date of the departure, enlistment or imprisonment or the date on which the Commissioner first receives notification of the departure, enlistment or imprisonment whichever is the later;
  - 31.51.2 in the cases referred to in Clauses 31.50.4 and 31.50.5 from the date on which the Commissioner first receives notification of the absence or death.
- 31.52 The Commissioner shall notify the Contractor in writing of Patients removed from its List of Patients under Clause 31.50.

**Removal from the List of Patients accepted elsewhere as Temporary Residents**

- 31.53 The Commissioner shall remove from the Contractor's List of Patients a Patient who has been accepted as a Temporary Resident by another Contractor or other provider of Essential Services (or their equivalent) where it is satisfied, after due inquiry:

- 31.53.1 that the Patient's stay in the place of temporary residence has exceeded three (3) months; and
- 31.53.2 that the Patient has not returned to his normal place of residence or any other place within the Patient Registration Area.

31.54 The Commissioner shall notify the Contractor and, subject to Clause 31.27, where practicable, the Patient, of a removal under Clause 31.53.

31.55 A notification to the Patient under Clause 31.54 shall inform him of:

- 31.55.1 his entitlement to make arrangements for the provision to him of Essential Services (or their equivalent), including by the Contractor by whom he has been treated as a Temporary Resident; and
- 31.55.2 the name, postal and email address of the Commissioner.

### **Removal from a list of pupils at a school etc**

31.56 Where the Contractor provides Essential Services under the Contract to pupils at, or staff of, a school, the Commissioner shall remove from the Contractor's List of Patients any such patients who do not appear on particulars of persons who are pupils at, or staff of, that school provided by that school.

31.57 Where the Commissioner has made a request to a school to provide the particulars mentioned in Clause 31.56 and has not received them, it shall consult the Contractor as to whether it should remove from its List of Patients any persons appearing on that list as pupils at, or staff of, that school.

31.58 The Commissioner shall notify the Contractor in writing of Patients removed from its List of Patients under Clause 31.56

### **Termination of responsibility for Patients not registered with the Contractor**

31.59 Where the Contractor:

- 31.59.1 has received an application for the provision of medical services other than Essential Services:
    - 31.59.1.1 from a person who is not included in the Contractor's List of Patients;
    - 31.59.1.2 from a person whom it has not accepted as a Temporary Resident; or
    - 31.59.1.3 on behalf of a person mentioned in Clauses 31.59.1.1 and 31.59.1.2, from one of the persons specified in Clause 31.11; and
  - 31.59.2 has accepted that person as a Patient for the provision of the Service in question, its responsibility for that Patient shall be terminated in the circumstances referred to in Clause 31.60.
- 31.60 The circumstances referred to in Clause 31.59 are:
- 31.60.1 the Patient informing the Contractor that he no longer wishes it to be responsible for provision of the service in question;
  - 31.60.2 in cases where the Contractor has reasonable grounds for terminating its responsibility which do not relate to the person's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor informing the Patient that it no longer wishes to be responsible for providing him with the service in question; or
  - 31.60.3 it coming to the notice of the Contractor that the Patient:
    - 31.60.3.1 no longer resides in the Patient Registration Area for which the Contractor has agreed to provide the service; or
    - 31.60.3.2 is no longer included in the List of Patients of the other contractor to whose Registered

Patients the Contractor has agreed to provide the service in question.

- 31.61 If the Contractor wishes to terminate its responsibility for a patient under Clause 31.60.2, it shall notify the Patient of the termination and the reason for it.
- 31.62 The Contractor shall keep a written record of terminations under Clause 31.59 to 31.61 and of the reasons for them and shall make this record available to the Commissioner on request.
- 31.63 A termination under Clause 31.60.2 shall take effect:
- 31.63.1 from the date on which the notice is given where the grounds for termination are those specified in Clause 31.36; or
- 31.63.2 in all other cases, fourteen (14) days from the date on which the notice is given.

### **Application for Closure of Lists of Patients**

- 31.64 Where the Contractor which wishes to close its List of Patients, it must send a written application (the "Application") to close its list to the Commissioner. The Application must include the following details:
- 31.64.1 the options which the Contractor has considered, rejected or implemented in an attempt to relieve the difficulties which the Contractor has encountered in respect of its Open List of Patients and, if any of the options were implemented, the level of success in reducing or extinguishing such difficulties;
- 31.64.2 any discussions between the Contractor and its Patients and a summary of those discussions including whether in the opinion of those Patients the List of Patients should or should not be closed;
- 31.64.3 any discussions between the Contractor and other providers in the Patient Registration Area and a summary

of the opinion of the other providers as to whether the List of Patients should or should not be closed;

31.64.4 the period of time during which the Contractor wishes its List of Patients to be closed and that period must not be less than three (3) months and not more than 12 months;

31.64.5 any reasonable support from the Commissioner which the Contractor considers would enable its List of Patients to remain Open or would enable the period of proposed closure to be minimised;

31.64.6 any plans the Contractor may have to alleviate the difficulties mentioned in that Application during the period the List of Patients may be closed in order for that list to re-open at the end of the proposed closure period without the existence of those difficulties; and

31.64.7 any other information which the Contractor considers ought to be drawn to attention of the Commissioner.

31.65 The Commissioner must acknowledge receipt of the Application within a period of seven (7) days starting on the date the Application was received by the Commissioner.

31.66 The Commissioner must consider the Application and may request such other information from the Contractor which it requires to enable it to consider the Application.

31.67 The Commissioner must enter into discussions with the Contractor concerning:

31.67.1 the support which the Commissioner may give the Contractor; or

31.67.2 changes which the Commissioner or Contractor may make, to enable the Contractor to keep its List of Patients Open.

- 31.68 The Commissioner and the Contractor must, throughout the discussions referred to in Clause 31.67, use its reasonable endeavours to achieve the aim of keeping the Contractor's List of Patients Open.
- 31.69 The Commissioner or the Contractor may, at any stage during the discussions, invite the Local Medical Committee for the area in which the Contractor provides Services under the Contract to attend any meetings arranged between the Commissioner and the Contractor to discuss the Application.
- 31.70 The Commissioner may consult such persons as it appears to the Commissioner as may be affected by the closure of the Contractor's List of Patients, and if it does so, the Commissioner must provide to the Contractor a summary of the views expressed by those consulted in respect of the Application.
- 31.71 The Commissioner must enable the Contractor to consider and comment on all the information before the Commissioner makes a decision in respect of the Application.
- 31.72 The Contractor may withdraw its Application at any time before the Commissioner makes a decision in respect of that Application.
- 31.73 Within a period of 21 days starting on the date of receipt of the Application (or within such longer period as the Parties may agree), the Commissioner must make a decision:
- 31.73.1 to approve the Application and determine the date the closure is to take effect and the date the List of Patients is to re-open; or
  - 31.73.2 to reject the Application.
- 31.74 The Commissioner must notify the Contractor of its decision to approve the Application in accordance with Clauses 31.75 to 31.76, or in the case where the Application is rejected, in accordance with Clauses 31.82 to 31.84.

31.74.1 The Contractor must not submit more than one application to close its List of Patients in any period of 12 months starting on the date on which the Commissioner makes its decision on the Application unless:

31.74.1.1 Clauses 31.82 to 31.84 apply; or

31.74.1.2 there has been a change in circumstances of the Contractor which affects its ability to deliver the Services under the Contract.

### **Approval of Application to Close the Contractor's List of Patients**

31.75 Where the Commissioner approves the application to close the Contractor's List of Patients, it must--

31.75.1 notify the Contractor of its decision in writing as soon as possible and the notification (the "Closure Notice") must include the details referred to in Clause 31.76; and

31.75.2 at the same time as it notifies the Contractor, send a copy of the Closure Notice to the Local Medical Committee for the area in which the Contractor provides Services under the Contract and to any person it consulted in accordance with Clause 31.70.

31.76 The Closure Notice must include:

31.76.1 the period of time for which the Contractor's List of Patients will be closed which must be:

31.76.1.1 the period specified in the application to close the List of Patients; or

31.76.1.2 in the case where the Commissioner and the Contractor have agreed in writing a different period, that different period,

and in either case, the period must be not less than three (3) months and not more than 12 months;

31.76.2 the date from which the closure of the List of Patients is to take effect; and

31.76.3 the date from which the List of Patients is to re-open.

31.77 Subject to Clause 31.100, the Contractor must close its List of Patients with effect from the date the closure of the List of Patients is to take effect and the List of Patients must remain closed for the duration of the closure period as specified in the Closure Notice.

31.78 Not used

31.79 Not used

31.80 Not used

31.81 Not used

### **Rejection of an Application to Close the Contractor's List of Patients**

31.82 Where the Commissioner rejects an application to close the Contractor's List of Patients it must--

31.82.1 notify the Contractor of its decision in writing as soon as possible and the notification must include the reasons for the rejection of the application; and

31.82.2 at the same time as it notifies the Contractor, send a copy of the notification to the Local Medical Committee for the area in which the Contractor provides Services under the Contract and to any person it consulted in accordance with Clause 31.70.

31.83 Subject to Clause 31.84, if the Commissioner makes a decision to reject the Contractor's application to close its List of Patients, the Contractor must not make a further application until--



31.83.1 the end of the period of three (3) months, starting on the date of the decision of the Commissioner to reject; or

31.83.2 the end of the period of three (3) months, starting on the date of the final determination in respect of a dispute arising from the decision to reject the application made pursuant to the Dispute Resolution Procedure,

whichever is the later.

31.84 The Contractor may make a further application to close its List of Patients where there has been a change in the circumstances of the Contractor which affects its ability to deliver services under the Contract.

31.85 Not used

31.86 Not used

31.87 Not used

### **Application for an Extension of a closure period**

31.88 The Contractor may apply to extend a closure period by sending a written application to extend the closure period no later than eight (8) weeks before the date that period is due to expire.

31.89 The application to extend the closure period must include:

31.89.1 details of the options the Contractor has considered, rejected or implemented in an attempt to relieve the difficulties which have been encountered during the closure period or which may be encountered when the closure period expires;

31.89.2 the period of time during which the Contractor wishes its List of Patients to remain closed, which extended period of desired closure must not be more than 12 months;

31.89.3 details of any reasonable support from the Commissioner which the Contractor considers would enable its List of

Patients to re-open or would enable the proposed extension of the closure period to be minimised;

31.89.4 details of any plans the Contractor may have to alleviate the difficulties mentioned in the application to extend the closure period in order for the List of Patients to re-open at the end of the proposed extension of the closure period without the existence of those difficulties; and

31.89.5 any other information which the Contractor considers ought to be drawn to the attention of the Commissioner.

31.90 The Commissioner must acknowledge receipt of the application for an extension of the closure period within a period of seven (7) days starting on the date the application was received by the Commissioner.

31.91 The Commissioner must consider the application for an extension of the closure period and may request such other information from the Contractor which it requires to enable it to consider that application.

31.92 The Commissioner may enter into discussions with the Contractor concerning--

31.92.1 the support which the Commissioner may give the Contractor; or

31.92.2 changes which the Commissioner or Contractor may make to enable the Contractor to re-open its List of Patients.

31.93 Within a period of 14 days starting on the date of receipt of the application to extend the closure period (or within such longer period as the parties may agree), the Commissioner must make a decision as to whether to approve or reject the application to extend the closure period.

31.94 The Commissioner must notify the Contractor of its decision to approve or reject the application to extend the closure period as soon as possible after making its decision.

- 31.95 Where the Commissioner approves the application to extend the closure period, it must--
- 31.95.1 notify the Contractor of its decision in writing and the notification (the "Extended Closure Notice") shall include the details referred to in Clause 31.96; and
  - 31.95.2 at the same time as it notifies the Contractor, send a copy of the Extended Closure Notice to the Local Medical Committee for the area in which the Contractor provides the Services under the Contract and to any person it consulted in accordance with Clause 31.70.
- 31.96 The Extended Closure Notice must include:
- 31.96.1 the period of time for which the Contractor's List of Patients will remain closed which must be--
    - 31.96.1.1 the period specified in the application to extend the closure period; or
    - 31.96.1.2 in the case where the Commissioner and the Contractor have agreed in writing a different period to the period specified in the application to extend the closure period, the period which is agreed,  
  
and in either case, the period (the "**Extended Closure Period**"), must not be less than three (3) months and not more than 12 months;
  - 31.96.2 the date from which the Extended Closure Period is to take effect; and
  - 31.96.3 the date on which the List of Patients is to re-open.
- 31.97 Where the Commissioner rejects an application to extend the closure period it must:

- 31.97.1 notify the Contractor of its decision in writing and the notification must include the reasons for the rejection of the application; and
  - 31.97.2 at the same time as it notifies the Contractor, send a copy of the notification to the Local Medical Committee for the area in which the Contractor provides the Services under the Contract.
- 31.98 Where an application for an extension of the closure period is made in accordance with Clauses 31.88 and 31.89, the List of Patients will remain closed pending:
- 31.99 the determination by the Commissioner of the application for an extension of the closure period; or
  - 31.99.1 the Contractor ceasing to pursue any dispute arising from the application for an extension of the closure period pursuant to the NHS Dispute Resolution Procedure (or any court proceedings),whichever is the later.

### **Re-opening of List of Patients**

- 31.100 The Contractor may re-open its List of Patients if, before the expiry of the closure period, the Commissioner and the Contractor agree that the Contractor should re-open its List of Patients.

### **Assignment of patients to lists - open lists**

- 31.101 The Commissioner may, subject to Clause 31.105, assign a new Patient to the Contractor whose List of Patients is open.
- 31.102 In this clause, and in Clauses 31.103 and 31.104 and Clauses 31.106 to 31.120, a “new” Patient means a person who:
  - 31.102.1 not used;

31.102.2 has been refused inclusion in a List of Patients, or has not been accepted as a Temporary Resident by a provider; and

31.102.3 wishes to be included in the List of Patients of the Contractor.

### **Assignment of patients to lists - closed lists**

31.103 The Commissioner may not assign a Patient to the Contractor where it has closed its List of Patients except in the circumstances specified in Clause 31.104.

31.104 The Commissioner may, subject to Clause 31.105, assign a new patient to the Contractor when it has closed its List of Patients if:

31.104.1 the Assessment Panel has determined under the applicable provision of Schedule 5 of the PMS Agreements Regulations that patients may be assigned to the Contractor, and that determination has not been overturned either by a determination of the Secretary of State or (where applicable) by a court; and

31.104.2 the Commissioner has entered into discussions with the Contractor regarding the assignment of a patient if such discussions are required under Clauses 31.118 to 31.120.

### **Factors relevant to assignments**

31.105 In making an assignment to the Contractor under Clauses 31.101 to 31.104, the Commissioner shall have regard to:

31.105.1 the wishes and circumstances of the Patient to be assigned;

31.105.2 the distance between the Patient's place of residence and the Practice Premises;

31.105.3 any request made by the Contractor to remove the Patient from its List of Patients within the preceding period of six

(6) months starting on the date on which the application for assignment is received by the Commissioner;

31.105.4 whether, during the six (6) months ending on the date on which the application for assignment is received by the Commissioner, the Patient's name has been removed from the List of Patients on the grounds referred to in:

31.105.4.1 Clauses 31.28 to 31.35 (Removals from the List at the request of the Contractor);

31.105.4.2 Clauses 31.36 to 31.43 (Removal of Violent Patients from the List of Patients); or

31.105.4.3 the equivalent provision in relation to arrangements made under section 83(2) of the 2006 Act, or under a contract made in accordance with the GMS Contracts Regulations;

31.105.5 in a case in which Clause 31.105.4.2 applies (or the equivalent provisions as mentioned in Clause 31.105.4.3 apply) whether the Contractor has appropriate facilities to deal with such Patients; and

31.105.6 such other matters as the Commissioner considers to be relevant.

### **Assignments to closed lists: determination of the Assessment Panel**

31.106 If the Commissioner wishes to assign new patients to providers who have closed their list of patients (including the Contractor), it must prepare a proposal to be considered by the Assessment Panel.

31.107 The Commissioner must notify in writing:

31.107.1 providers (including the Contractor) who provide primary medical services under arrangements made under section 83(2) of the 2006 Act or under a Contract made in

accordance with the GMS Contracts Regulations 2004, which:

31.107.1.1 have closed their list of patients; and

31.107.1.2 may, in the opinion of the Commissioner, be affected by the determination of the Assessment Panel; and

31.107.2 the Local Medical Committee (if any) for the area in which the providers (including the Contractor) referred to in clause 31.107.1 provide Essential Services (or their equivalent), that it has referred the matter to the Assessment Panel.

31.108 The Commissioner must ensure that the Assessment Panel is appointed to consider and determine its proposal made under Clause 31.106, and the composition of the Assessment Panel shall be as described in Clause 31.109.

31.109 The members of the Assessment Panel must be:

31.109.1 a member of the Commissioner who is a director;

31.109.2 a patient representative who is a member of the Local Health and Wellbeing Commissioner or Local Healthwatch organisation; and

31.109.3 a member of a Local Medical Committee but not a member of the Local Medical Committee formed for the area in which the Contractor provides Essential Services.

31.110 In reaching its determination, the Assessment Panel must have regard to relevant factors including:

31.110.1 whether the Commissioner has attempted to secure the provision of Essential Services (or their equivalent) for new patients other than by means of its proposed assignment to a provider (including the Contractor) with a closed list of patients; and

- 31.110.2 whether the workload of those providers (including the Contractor) is likely to be affected by any decision to assign such patients to their list of patients.
- 31.111 The Assessment Panel must reach a determination within a period of 28 days starting on the date on which the Assessment Panel was appointed.
- 31.112 The Assessment Panel:
  - 31.112.1 must determine whether the Commissioner may assign patients to a provider (including the Contractor) which has a closed list of patients; and
  - 31.112.2 if it so determines that the Commissioner may make such an assignment, must determine in the case where there is more than one provider, those providers to which patients may be assigned.
- 31.113 The Assessment Panel may determine that the Commissioner may assign new patients to provider other than the providers (including the Contractor) specified in Clause 31.106, as long as the Contractors were notified under Clause 31.107.1.
- 31.114 The Assessment Panel's determination must include its comments on the matters referred to in Clause 31.110, and must be notified in writing to those Contractors referred to in Clause 31.107.1.

### **Assignments to closed lists: Dispute Resolution**

#### **Procedure relating to determinations of the Assessment Panel**

- 31.115 Where the Assessment Panel determines in accordance with the applicable provisions of Schedule 5 to the PMS Agreements Regulations that the Commissioner may assign new patients to Contractors which have closed their lists of patients, and the Contractor is specified in that determination, the Contractor may refer the matter to



the Secretary of State to review the determination of the Assessment Panel.

31.116 Where, pursuant to Clause 31.115, the Contractor wishes to refer the matter to the Secretary of State either by itself, or jointly with other provider specified in the determination of the Assessment Panel, it must, either by itself or together with the other providers, within the period of seven (7) days beginning with the date of the determination of the Assessment Panel, send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by:

31.116.1 the names and addresses of the parties to the dispute;

31.116.2 a copy of the Contract (or contracts); and

31.116.3 a brief statement describing the nature and circumstances of the dispute.

31.117 Where a matter is referred to the Secretary of State in accordance with Schedule 5 to PMS Agreement Regulations it shall be reviewed in accordance with the procedure specified in Schedule 5, Part 2, paragraph 35.

**Assignments to closed lists: assignments of patients by the Commissioner**

31.118 Before the Commissioner may assign a patient to the Contractor where it has closed its list, it shall, subject to Clause 31.120, enter into discussions with the Contractor regarding additional support that the Commissioner can offer the Contractor, and the Commissioner shall use its best endeavours to provide appropriate support.

31.119 In the discussions referred to in Clause 31.118, both parties shall use reasonable endeavours to reach agreement.

31.120 The requirement in Clause 31.118 to enter into discussions applies:

31.120.1 to the first assignment of a patient to the Contractor; and

- 31.120.2 to any subsequent assignment to that Contractor to the extent that it is reasonable and appropriate having regard to the numbers of patients who have been or may be assigned to it and the period of time since the last discussions under Clause 31.118 took place.

### **Patients aged 75 and over: Accountable GP**

- 31.121 The Contractor must ensure that for each of its Registered Patients aged 75 and over there is assigned an Accountable GP.
- 31.122 The Accountable GP must:
- 31.122.1 take lead responsibility for ensuring that all Services are, to the extent that their provision is considered necessary to meet the needs of the patient, delivered to the Patient;
  - 31.122.2 take all reasonable steps to recognise and appropriately respond to the physical and psychological needs of the Patient in a timely manner;
  - 31.122.3 ensure that the Patient receives a Health Check if, and within a reasonable period after, one has been requested; and
  - 31.122.4 work co-operatively with other health and social care professionals who may become involved in the care and treatment of the Patient to ensure the delivery of a multi-disciplinary care package designed to meet the needs of the Patient
- 31.123 The Contractor must—
- 31.123.1 inform the Patient, in such manner as is considered appropriate by the Practice, of the assignment to them of an Accountable GP which must state the name and contact details of the Accountable GP and the role and

responsibilities of the Accountable GP in respect of the Patient;

31.123.2 inform the Patient as soon as any circumstances arise in which the Accountable GP is not able, for any significant period, to carry out their duties towards the Patient; and

31.123.3 where the Practice considers it to be necessary, assign a replacement Accountable GP to the Patient and give notice to the Patient accordingly

31.124 The Contractor must comply with the requirement in clause 31.122.1:

31.124.1 in the case of any person who is included in the List of Patients immediately before 1 April 2014 and:

31.124.1.1 is aged 75 or over on or before that date, by 30 June 2014; or

31.124.1.2 who attains the age of 75 after that date, within 21 days from the date on which that person attained that age; or

31.124.2 in the case of any person aged 75 or over who is accepted by the Contractor as a Registered Patient on or after 1 April 2014, within 21 days from the date on which that person is so accepted.

### **Registered Patients from outside Patient Registration Area; variation of contractual terms**

31.125 Where the Contractor provides Essential Services, the Contractor may, on or after 1 October 2014, accept on its List of Patients, or subsequently wish to remove a person who resides outside of the Patient Registration Area whereupon the Commissioner and the Contractor shall vary the Contract in order to comply with the requirements of Direction 14 of the APMS Directions.

## **Savings in respect of the Patient Choice Extension Scheme**

- 31.126 Where, before 1 April 2014 a Patient is included in the Contractor's List of Patients pursuant to arrangements entered into by the Contractor and the Commissioner under the Patient Choice Extension Scheme and the terms of the Contract were varied pursuant to Direction 14 of the APMS Directions as it had effect immediately before that date, the Patient may remain registered with the Contractor's Practice and any variation to the Contract which exempts the Contractor's Practice from obligations or liabilities under those arrangements continues to operate for such period as the patient remains so registered and paragraph 6 of the above mentioned Direction 14 as it had effect immediately before 1 April 2014 continues to have effect in relation to an APMS contract where, before that date, the Contractor had entered into arrangements with the Commissioner under the Patient Choice Extension Scheme.

## **Newly registered patients – alcohol dependency screening**

- 31.127 Where under clause 31.7 a Patient has been:
- 31.127.1 accepted onto the Contractor's List of Patients; or
  - 31.127.2 assigned to that list by the Board,
- the Contractor must take action to identify any such Patient over the age of 16 who is drinking alcohol at increasing or higher risk levels with a view to seeking to reduce the alcohol related health risks to that Patient.
- 31.128 The Contractor must comply with the requirement in clause 31.127 by screening the Patient using either one of the two shortened versions of

the World Health Organisation Alcohol Use Disorders Identification (“AUDIT”) questionnaire<sup>11</sup> which are known as:

31.128.1 FAST (which has four questions); or

31.128.2 AUDIT-C (which has three questions).

31.129 Where, under clause 31.128, the Contractor identifies a Patient as positive using either of the shortened versions of the AUDIT questionnaire specified in clause 31.128, the remaining questions of the full ten question AUDIT questionnaire are to be used by the Contractor to determine increasing risk, higher risk or likely dependent drinking.

31.130 Where a Patient is identified as drinking at increasing or higher risk levels, the Contractor must:

31.130.1 offer the Patient appropriate advice and lifestyle counselling;

31.130.2 respond to any other need identified in the Patient which relates to the Patient's levels of drinking, including by providing any additional support or treatment required for people with mental health issues; and

31.130.3 in any case where the Patient is identified as a dependent drinker, offer the Patient a referral to such specialist services as are considered clinically appropriate to meet the needs of the Patient.

31.131 Where a Patient is identified as drinking at increasing or higher risk levels or as a dependent drinker, the Contractor must ensure that the Patient is:

31.131.1 assessed for anxiety and depression;

31.131.2 offered screening for anxiety or depression; and

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<sup>11</sup> The World Health Organisation Alcohol Use Disorders Identification Test (AUDIT) questionnaire can be accessed at [http://www.who.int/substance\\_abuse/activities/sbi/en/](http://www.who.int/substance_abuse/activities/sbi/en/). Further information about the test, and the questionnaires themselves, are available in hard copy from NHS England, PO Box 16738, Redditch, B97 7PT

31.131.3 where anxiety or depression is diagnosed, provided with any treatment and support which may be required under the agreement, including referral for specialist mental health treatment.

31.132 The Contractor must make relevant entries, including the results of the completed questionnaire referred to in clause 31.128, in the Patient's record that the Contractor is required to keep under clause 32.

### **Accountable GPs**

31.133 A Contractor must ensure that for each of its Registered Patients (including patients under the age of 16) there is assigned an Accountable GP.

31.134 The Accountable GP must take lead responsibility for ensuring that any services which the Contractor is required to provide under the Contract are, to the extent that their provision is considered necessary to meet the needs of the Patient, coordinated and delivered to the Patient.

31.135 The Contractor must:

31.135.1 inform the Patient, as soon as is reasonably practicable and in such manner as is considered appropriate by the Practice, of the assignment to the Patient of an Accountable GP and must state the name and contact details of the Accountable GP and the role and responsibilities of the Accountable GP in respect of the Patient;

31.135.2 inform the Patient as soon as any circumstances arise in which the Accountable GP is not able, for any significant period, to carry out the duties of an Accountable GP in respect of the Patient; and

31.135.3 where the Practice considers it to be necessary, assign a replacement Accountable GP to the Patient and give notice to the Patient accordingly.

- 31.136 The Contractor must comply with the requirement in sub-clause 31.135.1:
- 31.136.1 by 30th June 2015, in the case of any person who is included in the Contractor's List of Patients immediately before 1st April 2015; or
- 31.136.2 in the case of any person who is accepted by the Contractor as a Registered Patient on or after 1st April 2015, within 21 days from the date on which that patient is so accepted.
- 31.137 The requirement in clause 31.133 does not apply to:
- 31.137.1 any patient of the Contractor who is aged 75 or over, or who attains the age of 75, on or after 1st April 2015; or
- 31.137.2 any other patient of the Contractor if the Contractor has been informed that the Patient does not wish to have an Accountable GP.
- 31.138 Where, under sub-clause 31.135.1, the Contractor informs a Patient of the assignment to them of an Accountable GP, the Patient may express a preference as to which general medical practitioner within the Contractor's Practice the Patient would like to have as the Patient's Accountable GP and, where such a preference has been expressed, the Contractor must make reasonable efforts to accommodate the request.
- 31.139 Where, under sub-clause 31.137.2, the Contractor has been informed by or in relation to a Patient that the Patient does not wish to have an Accountable GP, the Contractor must record that fact in the Patient's record that the Contractor is required to keep under clause 32.
- 31.140 The Contractor must, by no later than 31st March 2016, include information about the requirement to assign an Accountable GP to each of its new and existing Registered Patients:
- 31.140.1 on the Contractor's practice website (if it has one); and

31.140.2 in the Contractor's practice leaflet.

31.141 Where the Contractor does not have a practice website, the Contractor must include the information referred to in clause 31.140 on its profile page on NHS Choices<sup>12</sup>.

### **Inclusion in list of patients: armed forces personnel**

31.142 The Contractor may, if its List of Patients is open, include a person to whom clause 31.143 applies in its List of Patients for a period of up to two years and clause 31.50.2 does not apply in respect of any person included in the Contractor's List of Patients by virtue of clauses 31.142 to 31.146.

31.143 This clause applies to a person who is:

31.143.1 a serving member of the Armed Forces of the Crown who has received written authorisation from Defence Medical Services<sup>13</sup> to receive primary medical services from the Contractor's Practice; and

31.143.2 living or working within the Contractor's Patient Registration Area during the period in respect of which that written authorisation is given.

31.144 Where the Contractor has accepted a person to whom clause 31.143 applies onto its List of Patients, the Contractor must:

31.144.1 obtain a copy of the patient's medical record or a summary of that record from Defence Medical Services; and

31.144.2 provide regular updates to Defence Medical Services at such intervals as are agreed with Defence Medical Services about any care and treatment which the Contractor has provided to the Patient.

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<sup>12</sup> NHS Choices is the website available at <http://www.nhs.uk> which provides information from the National Health Service on conditions, treatments and local services including GP services

<sup>13</sup> Defence Medical Services is an umbrella organisation within the Ministry of Defence which is responsible for the provision of medical, dental and nursing services in the United Kingdom to members of the armed forces of the Crown.



- 31.145 At the end of the period of two years, or on such earlier date as the Contractor's responsibility for the Patient has come to an end, the Contractor must:
- 31.145.1 notify Defence Medical Services in writing that its responsibility for that person has come to an end; and
  - 31.145.2 update the Patient's medical record, or summary of that record, and return it to Defence Medical Services.
- 31.146 In clauses 31.142 to 31.145 , “primary medical services” are the medical services which are provided by the Contractor's Practice under the Contract to which Part 4 of the 2006 Act applies.

## **RECORDS, INFORMATION, NOTIFICATION AND RIGHTS OF ENTRY**

### **32 Patient Records**

- 32.1 In this Clause “computerised records” means records created by way of entries on a computer.
- 32.2 The Contractor shall keep adequate records of its attendance on and treatment of its Patients and shall do so:
- 32.2.1 on forms supplied to it for the purpose by the Commissioner; or
  - 32.2.2 with the written consent of the Commissioner, by way of computerised records; or
  - 32.2.3 in a combination of those two (2) ways.
- 32.3 The Contractor shall include in the records referred to in Clause 32.2 clinical reports sent in accordance with Clause 10.1.
- 32.4 The consent of the Commissioner required by Clause 32.2.2 shall not be withheld or, once given, withdrawn provided the Commissioner is satisfied, and continues to be satisfied, that:

- 32.4.1 the computer system upon which the Contractor proposes to keep the records has been accredited by the Secretary of State or another person on his behalf in accordance with “General Practice Systems of Choice Level 2”;
  - 32.4.2 the security measures audit and system management functions incorporated into the computer system as accredited in accordance with Clause 32.4.1 have been enabled; and
  - 32.4.3 the Contractor is aware of, and has signed an undertaking that it will have regard to the guidelines contained in “the Good Practice Guidelines for GP Electronic Records (Version 4)”, published on 21 March 2011 or in any document which it has been notified by the Commissioner has replaced that document.
- 32.5 Where a Patient’s records are computerised records the Contractor shall, as soon as possible following a request from the Commissioner, allow the Commissioner to access the information recorded on its computer system by means of the audit function referred to in Clause 32.4.2 to the extent necessary for the Commissioner to check that the audit function is enabled and functioning correctly.
- 32.6 The Contractor shall send the complete records relating to a Patient to the Commissioner:
  - 32.6.1 as soon as possible, at the request of the Commissioner; or
  - 32.6.2 where a person on its list dies, before the end of the period of fourteen (14) days beginning with the date on which it was informed by the Commissioner of the death, or (in any other case) before the end of the period of one month beginning with the date on which it learned of the death and the Contractor’s obligations pursuant to this Clause,

and Clause 32.7 below shall survive the termination or expiry of the Contract.

32.7 To the extent that a Patient's records are computerised records, the Contractor complies with Clause 32.6 if it sends to the Commissioner a copy of those records:

32.7.1 in written form; or

32.7.2 with the written consent of the Commissioner in any other form.

32.8 The consent of the Commissioner to the transmission of information other than in written form for the purposes of Clause 32.7.2 shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters:

32.8.1 the Contractor's proposals as to how the record will be transmitted;

32.8.2 the Contractor's proposals as to the format of the transmitted record;

32.8.3 how the Contractor will ensure that the record received by the Commissioner is identical to that transmitted; and

32.8.4 how a written copy of the record can be produced by the Commissioner.

32.9 Where the Contractor keeps computerised records, the Contractor shall not disable, or attempt to disable, either the security measures or the audit and system management functions referred to in Clause 32.4.2.

### **Summary Care Record**

32.10 The Contractor must, in any case where there is a change to the information included in a Patient's medical record, enable an automated upload of Summary Information to the Summary Care Record, at least on a daily basis, using the approved systems provided to it by the Commissioner.

- 32.11 The requirement in clause 32.10 does not apply to the Contractor where:
- 32.11.1 the Contractor does not have access to computer systems and software which would enable it to carry out automated uploads of the Summary Information; and
  - 32.11.2 the Contractor has, by 30 September 2014, publicised its plans to enable it to achieve that requirement by no later than 31 March 2015 by displaying a statement of intent at the Practice Premises and, where the Practice has a website, on the Practice website.

### **Electronic transfer of patient records**

- 32.12 The Contractor must use the GP2GP Facility for the safe and effective transfer of any Patient Records:
- 32.12.1 in a case where a new Patient registers with the Practice, to the Practice from another provider of primary medical services (if any) with which the Patient was previously registered; or
  - 32.12.2 in a case where the Contractor receives a request from another provider of primary medical services with which the Patient has registered, in order to respond to that request.
- 32.13 The requirement in clause 32.12 does not apply to the Contractor where:
- 32.13.1 the Contractor does not have access to computer systems and software which would enable it to use the GP2GP Facility to effect the transfer of Patient Records to another provider of primary medical services with a patient list; and
  - 32.13.2 the Contractor has, by 30 September 2014, publicised its plans to enable it to achieve that requirement by 31 March 2015 by displaying a statement of intent at the Practice

Premises and, where the Practice has a website, on the Practice website.

- 32.13A      Clauses 32.12 and 32.13 do not apply in the case of a Temporary Resident.

**Clinical correspondence: requirement for NHS number**

- 32.14      The Contractor must include the NHS Number of a Registered Patient as the primary identifier in all Clinical Correspondence issued by the Contractor which relates to that Patient except where, in exceptional circumstances outside of the Contractor's control, it is not possible for the Contractor to ascertain the patient's NHS Number.

**Patient online services**

- 32.15      The Contractor must promote and offer to its Registered Patients the facility for a Patient:

- 32.15.1      to book, view, amend, cancel and print appointments online;
- 32.15.2      to order repeat prescriptions for drugs, medicines or appliances online; and
- 32.15.3      to view and print a list of any drugs, medicines or appliances in respect of which the Patient has a repeat prescription

in a manner which is capable of being electronically integrated with the computerised clinical systems of the Contractor using appropriate systems authorised by the Commissioner.

- 32.15A      A Contractor must, when complying with the requirement in sub-clause 32.15.1, consider whether it is necessary, in order to meet the reasonable needs of its Registered Patients, to take action to comply with the requirement in sub-clause 32.15.1 so as to increase the proportion of appointments which are available for its Registered Patients to book online and, if so, take such action.

- 32.16 The Contractor must promote and offer to its Registered Patients, in circumstances where the medical records of its Patients are held on the Contractor's computerised clinical systems, the facility for a Patient to:
- 32.16.1 access online any Summary Information derived from the Patient's medical records and any other data which the Contractor has agreed that the Patient may access; and
  - 32.16.2 view online, electronically export or print any Summary Information derived from the Patient's medical records and any other data which the Contractor has agreed that the Patient may access.
- 32.16A A Contractor must promote and offer to its Registered Patients, in circumstances where the medical records of its Registered Patients are held on the Contractor's computerised clinical systems, the facility for any such Patient to access online all information from the Patient's medical record which is held in coded form unless:
- 32.16A.1 in the reasonable opinion of the Contractor, access to such information would not be in the Patient's best interests because it is likely to cause serious harm:
    - 32.16A.1.1 to the Patient's physical or mental health, or
    - 32.16A.1.2 to the physical or mental health of any other person;
  - 32.16A.2 the information includes a reference to any third party who has not consented to its disclosure; or
  - 32.16A.3 the information in the Patient's medical record contains a free text entry and it is not possible under the Contractor's computerised clinical systems to separate that free text entry from other information in that medical record which is held in coded form.

- 32.17 Where the Contractor has a practice website, the Contractor must also promote and offer to its Registered Patients the facility referred to in clauses 32.15.1 and 32.15.2 on that practice website.
- 32.18 The requirements in clause 32.15 do not apply where the Contractor does not have access to computer systems and software which would enable it to offer the online services described in clause 32.15 to its Registered Patients.
- 32.19 The requirements in clause 32.16:
- 32.19.1 do not apply where the Contractor does not have access to computer systems and software which would enable it to offer the online services described in clause 32.16; and
  - 32.19.2 only apply until such time as the Contractor is able to fully comply with the requirements in clause 32.16A.
- 32.20 The requirements in clause 32.16A do not apply where:
- 32.20.1 the Contractor does not have access to GPSOC accredited computer systems and software which would enable it to offer the online services described in that sub-paragraph to its Registered Patients; and
  - 32.20.2 the Contractor has, by 30th September 2015, publicised its plans to enable it to achieve those requirements by 31st March 2016 by displaying a statement of intent on the Practice Premises and, where the Practice has a website, on the practice website.

### **33 Confidentiality of Personal Data**

- 33.1 The Contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of Personal Data (as defined in the Data Protection Act 1998) held by it.

- 33.2 The Contractor shall maintain the confidentiality of Personal Data entrusted to it in accordance with the provisions of the Data Protection Act 1998.
- 33.3 The Contractor shall have regard to the Provisions of the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Contractor Medical Services Code of Practice (as amended or reissued from time to time).

## **34 Provision of Information to a Medical Officer Etc**

- 34.1 The Contractor must, if satisfied that the Patient consents:
- 34.1.1 supply in writing to any person specified in Clause 34.3, within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in Clauses 34.3.1 to 34.3.4 considers relevant about a Patient to whom the Contractor or a person acting on behalf of the Contractor has issued or has refused to issue a medical certificate; and
  - 34.1.2 answer any inquiries by any person mentioned in Clause 34.3 about:
    - 34.1.2.1 a Prescription Form or medical certificate issued or created by, or on behalf of, the Contractor, or
    - 34.1.2.2 any statement which the Contractor or a person acting on behalf of the Contractor has made in a report.
- 34.2 For the purposes of being satisfied that a Patient consents, a Contractor may rely on an assurance in writing from any person mentioned in Clause 34.3 that the consent of the Patient has been obtained, unless the Contractor has reason to believe that the Patient does not consent.
- 34.3 For the purposes of Clauses 34.1 and 34.2, the persons are:



- 34.3.1 a Medical Officer;
- 34.3.2 a Nursing Officer;
- 34.3.3 an Occupational Therapist;
- 34.3.4 a Physiotherapist; or
- 34.3.5 an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs 34.3.1 to 34.3.4.

## **35 Provision of Information to the Commissioner**

35.1 The Contractor must, at the request of the Commissioner, produce to it, or a person authorised in writing by it, or allow the Commissioner, or a person authorised by it to access, on request within a maximum period of 28 days of the request being made:

- 35.1.1 any information which is reasonably required by the Commissioner for the purposes of or in connection with the Contract; and
- 35.1.2 any other information which is reasonably required in connection with the Commissioner's functions,

but the Contractor shall not be required to comply with any request made in accordance with this Clause 35.1 unless it has been made by the Commissioner in accordance with directions made by the Secretary of State under section 98A (Exercise of Functions) of the 2006 Act relating to the provision of information by Contractors, the Confidentiality Directions and the parts of the Code of Practice referred to therein.

## **35A Friends and Family Test**

35A.1 A Contractor which provides Essential Services must give all Patients who use the Contractor's Practice the opportunity to provide feedback

about the service received from the Practice through the Friends and Family Test.

35A.2 The Contractor must:

35A.2.1 report the results of completed Friends and Family Tests to the Board; and

35A.2.2 publish the results of such completed Tests, in the manner approved by the Board.

35A.3 In this clause 35A, “Friends and Family Test” means the arrangements that a Contractor is required by the Board to implement to enable its Patients to provide anonymous feedback about the patient experience at the Contractor's Practice.

## **35B Publication of earnings information**

35B.1 The Contractor must publish each year on its practice website (if it has one) the information specified in clause 35B.2.

35B.2 The information specified in this sub-paragraph is:

35B.2.1 the mean net earnings in respect of the previous financial year of:

35B.2.1.1 all general medical practitioners who were party to the agreement for a period of at least six months during that financial year, and

35B.2.1.2 any general medical practitioners who were employed or engaged by the Contractor to provide services under the Contract in the Contractor's Practice, whether on a full-time or part-time basis, for a period of at least six months during that financial year; and

35B.2.2 the:

35B.2.2.1 total number of any general medical practitioners to whom the earnings information referred to in clause 35B.2.1 relates, and

35B.2.2.2 (where applicable) the number of those practitioners who have been employed or engaged by the Contractor to provide services under the Contract in the Contractor's Practice on a full time or a part time basis and for a period of at least six months during the financial year in respect of which that information relates.

35B.3 The information specified in clause 35B.2 must be:

35B.3.1 published by the Contractor before the end of the financial year following the financial year to which that information relates; and

36B.3.2 made available by the Contractor in hard copy form on request.

35B.4 For the purposes of clause 35B, "mean net earnings" are to be calculated by reference to the earnings of a general medical practitioner that, in the opinion of the Board, are attributable to the performance or provision by the practitioner under the agreement of medical services to which Part 4 of the 2006 Act applies, after having disregarded any expenses properly incurred in the course of performing or providing those services.

## **36 Practice Leaflet**

36.1 The Contractor shall:

- 36.1.1 compile a practice leaflet which shall include the information specified in Schedule 8;
- 36.1.2 review its practice leaflet at least once in every period of twelve (12) months and make any amendments necessary to maintain its accuracy;
- 36.1.3 make available a copy of the leaflet, and any subsequent updates, to its Patients and prospective patients and to the Commissioner;
- 36.1.4 amend the Practice Leaflet if there are any material changes to the Services or to the information provided therein within three (3) months of such change(s).

## **37 Provision of Practice Information on the Internet**

- 37.1 Where the Contractor has a website, the Contractor must publish on that website details of the Patient Registration Area, including the area known as the Outer Boundary Area, by reference to a sketch diagram, plan or postcode as set out in Annex 3.
- 37.2 The Contractor shall maintain its practice details on the NHS Choices Website.

## **38 Inquiries about Prescriptions and Referrals**

- 38.1 The Contractor shall, subject to Clauses 38.2 and 38.3, sufficiently answer any inquiries whether oral or in writing from the Commissioner concerning:
  - 38.1.1 any Prescription Form or Repeatable Prescription issued or created by a Prescriber;
  - 38.1.2 the considerations by reference to which Prescribers issue such forms;

38.1.3 the referral by or on behalf of the Contractor of any Patient to any other services provided under the 2006 Act or the 2012 Act (as the case may be); or

38.1.4 the considerations by which the Contractor makes such referrals or provides for them to be made on its behalf.

38.2 An inquiry referred to in Clause 38.1 may only be made for the purpose either of obtaining information to assist the Commissioner to discharge its functions or of assisting the Contractor in the discharge of its obligations under the Contract.

38.3 The Contractor shall not be obliged to answer any inquiry referred to in Clause 38.1 unless it is made:

38.3.1 in the case of Clause 38.1.1 or 38.1.2 by an appropriately qualified Health Care Professional; or

38.3.2 in the case of Clause 38.1.3 or 38.1.4, by an appropriately qualified medical practitioner,

appointed in either case by the Commissioner to assist it in the exercise of its functions under Clause 38.1 and 38.2 who produces, on request, written evidence that that person is authorised by the Commissioner to make such an inquiry on its behalf.

## **39 Financial Interests**

39.1 In making a decision to refer a Patient for other services under the 2006 Act or the 2012 Act (as the case may be), or in making a decision to prescribe any drug, medicine or other Appliance to any Patient the Contractor shall have regard to all relevant clinical considerations as well as the provisions of Clauses 24 to 30 of this Contract and disregard its own financial interests and other inappropriate financial interests.

39.2 The Contractor shall not inform Patients that any prescription for any drug, medicine or other Appliance must be dispensed only by the Contractor or a person with whom the Contractor is associated.

- 39.3 The Contractor must not act in any way to encourage a Patient to move to another of the Contractor's primary care contracts in order for the Contractor to obtain a financial gain.

## **40 Performance Management and Monitoring**

- 40.1 The Contractor shall comply with the monitoring arrangements set out in Schedule 6 (Performance Management) to this Contract including but not limited to, providing such data and information as the Authority may require the Contractor to produce under this Contract.
- 40.2 The Contractor shall cooperate and shall procure that its Sub-Contractors co-operate with the Authority in carrying out the monitoring referred to in this Clause 40.

## **40A Patient Participation**

- 40A.1 A Contractor which provides Essential Services must establish and maintain a group known as a "Patient Participation Group" comprising of some of its Registered Patients for the purposes of:
- 40A.1.1 obtaining the views of Patients who have attended the Contractor's Practice about the services delivered by the Contractor; and
  - 40A.1.2 enabling the Contractor to obtain feedback from its Registered Patients about those services.
- 40A.2 The Contractor is not required to establish a Patient Participation Group if such a group has already been established by the Contractor pursuant to the provisions of any directions about Enhanced Services which were given by the Secretary of State under section 98A of the 2006 Act before 1st April 2015.
- 40A.3 The Contractor must make reasonable efforts during each financial year to review the membership of its Patient Participation Group in

order to ensure that the Group is representative of its Registered Patients.

40A.4 The Contractor must:

40A.4.1 engage with its Patient Participation Group, at such frequent intervals throughout each financial year as the Contractor must agree with that Group, with a view to obtaining feedback from the Contractor's Registered Patients, in an appropriate and accessible manner which is designed to encourage patient participation, about the services delivered by the Contractor; and

40A.4.2 review any feedback received about the services delivered by the Contractor, whether pursuant to sub-clause 40A.4.1 or otherwise, with its Patient Participation Group with a view to agreeing with that Group the improvements (if any) which are to be made to those services.

40A.5 The Contractor must make reasonable efforts to implement such improvements to the services delivered by the Contractor as are agreed between the Contractor and its Patient Participation Group.

40A.6 In this clause 40A “financial year” means the 12 month period beginning on 1st April each year and ending on 31st March the following year.

## **41 Notifications to the Commissioner**

41.1 In addition to any requirements of notification elsewhere in the Contract, the Contractor shall notify the Commissioner in writing, as soon as reasonably practicable, of:

- 41.1.1 any serious incident that, in the reasonable opinion of the Contractor, affects or is likely to affect the Contractor's performance of its obligations under the Contract;
  - 41.1.2 any circumstances which give rise to the Commissioner's right to terminate the Contract under Clauses 60 and 61;
  - 41.1.3 any circumstances which give rise to the Commissioner's right to terminate the Contract under any other provision of the Contract;
  - 41.1.4 any appointments system which it proposes to operate and the proposed discontinuance of any such system;
  - 41.1.5 any change of which it is aware in the address of a Registered Patient;
  - 41.1.6 the death of any Patient of which it is aware; and
  - 41.1.7 any changes in clinical and non-clinical staff.
- 41.2 Where the Contractor is a company, it shall give notice in writing to the Commissioner forthwith when:
- 41.2.1 it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;
  - 41.2.2 circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;
  - 41.2.3 circumstances arise which would enable the court to make a winding up order in respect of the Contractor;
  - 41.2.4 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 41.2.5 a number of shares equal to 10% or more of the shares in issue in the Contractor are transmitted or transferred (whether legally or beneficially) to another person on a date after the Contract has been entered in;



- 41.2.6 if there is any change in the Contractor's Group structure or identity of the ultimate parent within that Group structure within the meaning of section 1159 Companies Act 2006; or
  - 41.2.7 a new director or secretary is appointed.
- 41.3 A notice under Clause 41.2.5 shall confirm the new shareholder, or, as the case may be, the personal representative of a deceased shareholder:
  - 41.3.1 falls within section 93(1)(a), (b), (c), (d), (e) or (f) of the 2006 Act; and
  - 41.3.2 meets the further conditions imposed on shareholders by virtue of direction 4 of the APMS Directions.
- 41.4 A notice under Clause 41.2.7 shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of direction 4 of the APMS Directions.

## **42 Notification of Deaths**

- 42.1 The Contractor shall report in writing to the Commissioner the death on the Practice Premises of any Patient no later than the end of the first Working Day after the date on which the death occurred. The report shall include:
  - 42.1.1 the Patient's full name;
  - 42.1.2 the Patient's National Health Service number where known;
  - 42.1.3 the date and place of death;
  - 42.1.4 a brief description of the circumstances, as known, surrounding the death;
  - 42.1.5 the name of any doctor or other person treating the Patient whilst on the Practice Premises; and

- 42.1.6 the name, where known, of any other person who was present at the time of the death.

## **43 Entry and inspection by the Commissioner**

- 43.1 Subject to the conditions in Clause 43.2, the Contractor shall allow persons authorised in writing by the Commissioner to enter and inspect the Practice Premises at any reasonable time. In addition, the Commissioner shall have the right to examine any equipment and/or materials, and/or to interview any staff including any contractors engaged by the Contractor (but only as part of a properly conducted investigation into the clinical performance of the Contractor, such investigation to be proportionate and, for the avoidance of doubt, subject to the Law) that are reasonably connected to the delivery of services under this Contract at any reasonable time.
- 43.2 The conditions referred to in Clause 43.1 are that:
- 43.2.1 reasonable notice of the intended entry (or other proposed action) has been given;
  - 43.2.2 written evidence of the authority of the person seeking entry (or to take any other proposed action) is produced to the Contractor on request; and
  - 43.2.3 entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

## **44 Entry and Viewing by Local Healthwatch Organisations**

- 44.1 The Contractor must comply with the requirement to allow an authorised representative to enter and view the Practice Premises and observe the carrying-on of activities on the Practice Premises in accordance with regulations made under section 225 (Duties of Service Contractors to

allow entry by Local Healthwatch Organisations or Contractors) of the Local Government and Public Involvement Health Act 2007.

## **45 Entry and Inspection by the Care Quality Commission**

- 45.1 The Contractor shall allow persons authorised by the Care Quality Commission to enter and inspect the Practice Premises in accordance with section 62 of the Health and Social Care Act 2008 (entry and inspection).

## **46 Counter Fraud and Security Management**

- 46.1 Upon the request of the Commissioner or the NHS Counter Fraud and Security Management Service (the “CFSMS”), the Contractor shall ensure that the CFSMS is given access as soon as is reasonably practicable and in any event not later than seven (7) days from the date of the request to:
- 46.1.1 all property, premises, information (including records and data) owned or controlled by the Contractor relevant to the detection and investigation of cases of fraud and/or corruption directly or indirectly connected to the Contract; and
  - 46.1.2 all members of the Contractor’s staff who may have information to provide that is relevant to the detection and investigation of cases of fraud and/or corruption directly or indirectly connection to the Contract.
- 46.2 The Contractor shall put in place appropriate arrangements to ensure the security of Patients whilst in the Practice Premises and for the prevention and detection of fraud by or in relation to Patients and/or in relation to public funds.
- 46.3 The Contractor shall, on request by the Commissioner permit the Commissioner or its authorised representative or a person duly

authorised to act on behalf of the CFSMS, to review the arrangements put in place by the Contractor pursuant to Clause 46.2.

46.4 The Contractor shall promptly upon becoming aware of any suspected fraud or corruption involving the Patients or public funds, report such matter to the Commissioner.

46.5 The provisions of Clauses 46.1 and 46.4 shall continue following termination of the Contract for any reason whatsoever and without limit in time.

## 47 Certificates

47.1 The Contractor shall issue free of charge to a Patient or his personal representative any medical certificate of a description prescribed in column 1 of the table below which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of the table below, except where, for the condition to which the certificate relates, the Patient:

47.1.1 is being attended by a medical practitioner who is not employed or engaged by the Contractor, a party to this Contract or a shareholder in a qualifying body which is a party to this Contract; or

47.1.2 is not being treated by or under the supervision of a Health Care Professional.

**Table – List of Prescribed Medical Certificates**

Description of medical certificate	Enactment under or for the purpose of which certificate required
1. To support a claim or to obtain payment either personally or by proxy; to prove incapacity to work or for self-support for the purposes of an	Naval and Marine Pay and Pensions Act 1865 Air Force (Constitution) Act 1917 Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 Personal

Description of medical certificate	Enactment under or for the purpose of which certificate required
award by the Secretary of State; or to enable proxy to draw pensions etc.	Injuries (Emergency Provisions) Act 1939 Pensions (Mercantile Marine) Act 1942 Polish Resettlement Act 1947 Social Security Administration Act 1992 Social Security Contributions and Benefits Act 1992 Social Security Act 1998
2. To establish pregnancy for the purpose of obtaining welfare foods	Section 13 of the Social Security Act 1988 (schemes for distribution etc of welfare foods)
3. To secure registration of still-birth	Section 11 of the Births and Deaths Registration Act 1953 (special provision as to registration of still-birth)
4. To enable payment to be made to an institution or other person in case of mental disorder of persons entitled to payment from public funds.	Section 142 of the Mental Health Act 1983 (pay, pensions etc of mentally disordered persons)
5. To establish unfitness for jury service.	Juries Act 1974
6. To support late application for reinstatement in civil employment or notification of non-availability to take up employment owing to sickness.	Reserve Forces (Safeguarding of Employment) Act 1985.
7. To enable a person to be registered as an absent voter on grounds of physical incapacity	Representation of the People Act 1983
8. To support applications for certificates conferring exemption from	National Health Service Act 1977

Description of medical certificate	Enactment under or for the purpose of which certificate required
charges in respect of drugs, medicines and Appliances.	
9. To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable.	Local Government Finance Act 1992

47.2 The exception referred to in Clause 47.1.1 shall not apply where the certificate is issued pursuant to regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976 or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985.

## 48 Payment under the Contract

The Commissioner will pay the Contractor the Contract Price in accordance with Schedule 4.

## 49 Fees and Charges

49.1 The Contractor shall not, either itself or through any other person, demand or accept from:

49.1.1 any of its Registered Patients a fee or other remuneration for its own or another's benefit:

49.1.1.1 for the provision of any treatment whether under the Contract or otherwise, or

49.1.1.2 for any prescription or repeat prescription for any drug, medicine or Appliance,

except in the circumstances set out in Clause 49.2.

- 49.1.2 any of its Patients other than a Registered Patient a fee or other remuneration for its own or another's benefit:
  - 49.1.2.1 for the provision of any treatment under the Contract, or
  - 49.1.2.2 for any prescription or repeat prescription for any drug, medicine or Appliance in connection with that treatment.
- 49.2 The Contractor may demand or accept, directly or indirectly, a fee or other remuneration:
  - 49.2.1 from any statutory body for services rendered for the purposes of that body's statutory functions;
  - 49.2.2 from any body, employer or school for a routine medical examination of persons for whose welfare the body, employer or school is responsible, or an examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;
  - 49.2.3 for treatment which is not Primary Medical Services or otherwise required to be provided under the Contract and which is given:
    - 49.2.3.1 pursuant to Paragraph 11 of Schedule 6 of the 2006 Act (accommodation and services for private patients), or
    - 49.2.3.2 in a registered nursing home which is not providing services under the 2006 Act,if, in either case, the person administering the treatment is serving on the staff of a hospital providing services under the 2006 Act or the 2012 Act (as the case may be) as a specialist providing treatment of the kind the Patient requires and if, within 7 days of giving the treatment, the

Contractor or the person providing the treatment supplies the relevant body, on a form provided by it for the purpose, with such information about the treatment as it may require;

- 49.2.4 under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);
- 49.2.5 when it treats a Patient under clause 49.3 in compliance with Regulation 15(3) of the PMS Agreements Regulations, in which case it shall be entitled to demand and accept a reasonable fee (recoverable in certain circumstances under Clause 49.4 for any treatment given, if it gives the Patient a receipt;
- 49.2.6 for attending and examining (but not otherwise treating) a Patient:
  - 49.2.6.1 at his request at a police station in connection with possible criminal proceedings against him;
  - 49.2.6.2 at the request of a commercial, educational or not for profit organisation for the purpose of creating a medical report or certificate;
  - 49.2.6.3 for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the Patient;
- 49.2.7 for treatment consisting of an immunisation for which no remuneration is payable by the relevant body and which is requested in connection with travel abroad;
- 49.2.8 for prescribing or providing drugs, medicines or Appliances (including a collection of such drugs, medicines or Appliances in the form of a travel kit) which a Patient requires to have in his possession solely in anticipation of



the onset of an ailment or occurrence of an injury while he is outside the United Kingdom but for which he is not requiring treatment when the medicine is prescribed;

49.2.9 for a medical examination:

49.2.9.1 to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or

49.2.9.2 for the purpose of creating a report:

49.2.9.2.1 relating to a road traffic accident or criminal assault; or

49.2.9.2.2 that offers an opinion as to whether a Patient is fit to travel;

49.2.10 where it is a Contractor which is authorised or required in accordance with arrangements made with the Commissioner under section 126 (Arrangements for Pharmaceutical Services) and in accordance with regulations made under section 129 (Regulations at to Pharmaceutical Services) of the 2006 Act to provide drugs, medicines and Appliances to a Patient and provides for that Patient, otherwise than by way of Dispensing Services, any Scheduled Drug; and

49.2.11 for prescribing or providing drugs or medicines for malaria chemoprophylaxis.

49.3 Where a person applies to the Contractor for the provision of Services and claims to be entitled to be treated by the Contractor without paying a fee or other remuneration and the Contractor has reasonable doubts about that person's claim, the Contractor shall give any necessary treatment and shall be entitled to demand and accept a reasonable fee subject to the provision for repayment contained in Clause 49.4.

49.4 Where a person from whom the Contractor received a fee applies to the Commissioner for a refund within fourteen (14) days of payment of the fee (or such longer period not exceeding a month as the Commissioner may allow if it is satisfied that the failure to apply within fourteen (14) days was reasonable) and the Commissioner is satisfied that the person was entitled to be treated by the Contractor without paying a fee or other remuneration when the treatment was given, the Commissioner may recover the amount of the fee from the Contractor, by set off or otherwise, and shall pay that amount to the person who paid the fee.

49.5 In the provision of the Services, the Contractor shall:

49.5.1 provide information to the Patients regarding other services it provides (other than under the Contract) only where appropriate and shall ensure that such information is fair and accurate; and

49.5.2 where the other services are available to the Patient as part of the health service established pursuant to the 2006 Act or the 2012 Act (as the case may be), inform the Patient:

49.5.2.1 that the services are so available;

49.5.2.2 of any charge that apply to that health service and, if no such charge applies, that the service is free; and

49.5.2.3 how to access those health services.

49.6 This Clause 49 shall survive the expiry or termination of the Contract.

## **50 Clinical Governance**

50.1 Without prejudice to the Contractor's obligation to meet all performance requirements under the Contract:

50.1.1 the Contractor shall have an effective System of Clinical Governance (which shall include appropriate standard

operating procedures in relation to the management and use of controlled drugs);

50.1.2 the Contractor shall nominate a person who will have responsibility for ensuring the effective operation of the System of Clinical Governance;

50.1.3 the person nominated under Clause 50.1.2 shall be a person who performs or manages Services under the Contract.

50.2 The Contractor shall co-operate with the Commissioner in the discharge of any obligations of the Commissioner or its accountable officers under section 17 (Accountable Officers and their responsibilities as to Controlled Drugs) and section 18 (Co-operation between Health Bodies and other Organisations) of the Health Act 2006.

## **51 Indemnity**

51.1 The Contractor shall indemnify the Commissioner fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury or loss of or damage to property which is caused directly or indirectly by any act or omission or breach of obligation under the Contract of the Contractor, its staff, agents or sub-contractors save to the extent that the same was caused by any negligent act of the Commissioner or its servants.

## **52 Insurance**

52.1 The Contractor shall at all times hold adequate insurance in the sums detailed in Schedule 4 Part 2 in respect of any incident against:

52.1.1 all liabilities arising from negligent performance of Services under the Contract;

52.1.2 all public liabilities in relation to liabilities to third parties arising under or in connection with the Contract; and

52.1.3 all liabilities as an employer in respect of all staff.

- 52.2 The Contractor shall provide the Commissioner with a copy of all insurance policies obtained pursuant to Clause 52.1 and/or a broker certified schedule of insurances together with evidence that the requisite premiums have been paid upon the Commissioner's request.
- 52.3 The Contractor shall not sub-contract its obligations to provide the Services under the Contract unless it is satisfied that the sub-contractor holds adequate insurance against liability arising from negligent performance of such Services.
- 52.4 For the purposes of Clauses 52.1 to 52.3:
- 52.4.1 "insurance" means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor; and includes membership of a medical defence organisation established for the purpose set out in this Clause; and
- 52.4.2 the Contractor shall be regarded as holding insurance if insurance is held by a person employed or engaged by it in connection with clinical services which that person provides under the Contract or, as the case may be, sub-contract provided that that insurance is adequate and is in the sum of not less than that required by this Clause. The Contractor agrees that this may not be sufficient to meet the Contractor's obligations to insure all of the risks listed under Clause 52.1 and that the Contractor must seek advice from a specialist insurance broker in this regard.

## **53 Complaints**

- 53.1 The Contractor shall establish and operate a complaints procedure as approved by the Commissioner to deal with any complaints in relation to any matter reasonably connected with the provision of Services under the Contract.

- 53.2 The Contractor shall comply with the Complaints Regulations, the relevant provisions of which are set out in Schedule 5 (Complaints Procedure).

## **54 Sub-contracting and Change of Control**

- 54.1 The Contractor shall not sell, assign, sub-contract or in any way dispose of any of its rights or duties under the Contract in relation to the Services or any part thereof without the prior written authorisation of the Commissioner and subject to such conditions as the Commissioner in its absolute discretion may impose.

- 54.2 A contract with a sub-contractor must, unless the Commissioner agrees otherwise in writing, prohibit the sub-contractor from sub-contracting the services it has agreed with the Contractor to provide.

- 54.3 Save in respect of a public limited company listed on an internationally recognised exchange the Contractor shall not undergo a Change of Control without the prior authorisation of the Commissioner and subject to such conditions as the Commissioner may impose.

- 54.4 If the Contractor has a list of Registered Patients or a list of Registered Patients is held in respect of it, the Contractor shall not sub-contract any of its rights or duties under the Contract in relation to the provision of Essential Services to a company or firm:

54.4.1 owned wholly or partly by the Contractor, or by any former or current employee or partner or shareholder in, the Contractor;

54.4.2 formed by or on behalf of the Contractor, or from which it derives or may derive pecuniary benefit;

54.4.3 formed by or on behalf of a former or current employee of, or partner or shareholder in, the Contractor, or from which such a person derives or may derive pecuniary benefit,

where that company or firm is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical

practice in section 259 of the 2006 Act or any relevant regulations made wholly or partly under that section.

## **55 Co-operation with Investigations**

55.1 The Contractor shall co-operate with:

- 55.1.1 any investigation of a complaint in relation to any matter reasonably connected with the provision of the Services by the Contractor undertaken in accordance with directions given under section 8 of the 2006 Act by the Commissioner and the Health Service Commissioner;
- 55.1.2 any investigation of a complaint by an NHS body or local authority which relates to a Patient or former Patient of the Contractor; and
- 55.1.3 any further or other investigation initiated by the Commissioner in connection with the Services.

55.2 In Clause 55.1:

- 55.2.1 “NHS body” means the Commissioner, a CCG, (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a Local Health Commissioner, a Health Commissioner, a Health and Social Services Commissioner or a Health and Social Services Trust;
- 55.2.2 “local authority” means any of the bodies listed in section 1 of the Local Authority Social Services Act 1970, the Council of the Isles of Scilly or a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994; and
- 55.2.3 “Health Service Commissioner” means a person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to the Health Service Commissioners Act 1993

- 55.3 In co-operating with any investigation, the Contractor shall, by way of example:
- 55.3.1 answer questions reasonably put to the Contractor by the Commissioner;
  - 55.3.2 provide any information relating to the complaint reasonably required by the Commissioner; and
  - 55.3.3 attend any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the Contractor's presence at the meeting is reasonably required by the Commissioner.

## **56 Warranties**

- 56.1 Each of the Parties warrants that it has power to enter into this Contract and has obtained any necessary approvals to do so.
- 56.2 The Contractor warrants that the Contractor satisfies the conditions set out in direction 4 of the APMS Directions.
- 56.3 Each Party warrants to the other that it has not relied on any representation or agreement whether written or oral not expressly set out or referred to in the Contract.
- 56.4 The Contractor warrants that it has used all reasonable endeavours to ensure:
- 56.4.1 all information in writing provided to the Commissioner in seeking to become a Party to the Contract was, when given, true and accurate in all material respects, and in particular, that the Contractor satisfied the conditions set out in direction 4 of the APMS Directions;
  - 56.4.2 no information has been omitted which would make the information that was provided to the Commissioner materially misleading or inaccurate;

- 56.4.3 no circumstances have arisen which materially affect the truth and accuracy of such information; and
  - 56.4.4 it is not aware as at the date of the Contract of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Contract.
- 56.5 To the best of the Commissioner's knowledge after due enquiry by the Commissioner, the Commissioner warrants that it has used all reasonable endeavours to ensure:
- 56.5.1 all information in writing which it provided to the Contractor specifically to assist the Contractor to become a Party to the Contract was, when given, true and accurate in all material respects;
  - 56.5.2 no information has been omitted which would make the information that was provided to the Contractor materially misleading or inaccurate; and
  - 56.5.3 no circumstances have arisen which materially affect the truth and accuracy of such information.
- 56.6 The Commissioner shall indemnify the Contractor fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any claim against the Contractor by any third party relating to matters which occurred prior to the Commencement Date and which relate to any predecessor contract under which the Services or substantially similar services were provided, except where such claims, proceedings, actions, damages, legal costs, expenses and any other liabilities were caused by or contributed to by the Contractor and/or any employee of the Contractor.

## **57 Variation of the Contract**



- 57.1 Subject to the Commissioner's rights under Clause 57.2, no amendment or variation to the Contract shall have effect unless it is in writing and signed by or on behalf of the Commissioner and the Contractor.
- 57.2 The Commissioner may vary the Contract without the Contractor's consent so as to comply with the 2006 Act and 2012 Act (as the case may be), any regulations made pursuant to those Acts, any direction given by the Secretary of State pursuant to those Acts (which, for the avoidance of doubt, includes any amendments to the APMS Directions) where it:
- 57.2.1 is reasonably satisfied that it is necessary to vary the Contract in order so to comply; and
- 57.2.2 notifies the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.
- 57.3 Where it is reasonably practicable to do so, the date that the proposed variation under Clause 57.2.2 is to take effect shall be not less than fourteen (14) days after the date on which the notice under Clause 57.2.2 is served on the Contractor.
- 57.4 Subject to clause 57.5, where any variation is imposed under Clause 57.2, the Contractor and the Commissioner shall agree if possible any variation to the Contract Price consequent upon the variation to the Contract, and in default of agreement the Dispute may be referred to the Dispute Resolution Procedure under Clause 66 and Schedule 12.
- 57.5 Where any variation is imposed under clause 57.2 which would (save for this clause 57.5) give rise to an increase in the Contract Price equal to or less than 3%<sup>14</sup> in aggregate of the Contract Price, there shall be no variation to the Contract Price.
- 57.6 Where the Contract is varied in accordance with its terms and, as a result of the variation there is to be a change in the range of services provided to the Contractor's Registered Patients or Patients who are on

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<sup>14</sup> For local determination

the Contractor's List of Patients are to be removed from that list, the Commissioner shall notify those Patients in writing of the variation and its effect and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of Essential Services (or their equivalent).

## **58 Termination by Agreement**

- 58.1 The Commissioner and the Contractor may mutually agree in writing to terminate the Contract, and if the Parties so agree, they shall agree the date upon which that termination will take effect and any further terms upon which the Contract should be terminated.

## **59 Termination by the Contractor**

- 59.1 The Contractor may give notice ("late payment notice") which shall be in writing to the Commissioner if the Commissioner has failed to make any payments properly due to the Contractor in accordance with Clause 48 of the Contract. The Contractor shall specify in the late payment notice the payments that the Commissioner has failed to make in accordance with Clause 49 of the Contract.
- 59.2 The Contractor may, at least twenty eight (28) days after having served a late payment notice, terminate the Contract by a further written notice if the Commissioner has still failed to make payments properly due to the Contractor, and that were specified in the late payment notice served on the Commissioner pursuant to Clause 59.1.
- 59.3 If, following receipt of a late payment notice, the Commissioner refers the matter to the Dispute Resolution Procedure detailed in Clause 66 within twenty eight (28) days of the date upon which it is served with the late payment notice, and it notifies the Contractor in writing that it has done so within that period of time, the Contractor may not terminate the Contract pursuant to Clause 59.2 until:
- 59.3.1 there has been a determination of the Dispute pursuant to the Dispute Resolution Procedure; or

59.3.2 the Commissioner ceases to pursue the Dispute Resolution Procedure,

whichever is the sooner. Clauses 59.1 to 59.3 are without prejudice to any other rights to terminate the Contract that the Contractor may have.

## **60 Termination by the Commissioner for Provision of Untrue Etc Information**

60.1 The Commissioner may serve notice in writing on the Contractor terminating the Contract forthwith, or from such date as may be specified in the notice if, after the Contract was entered into, it has come to the attention of the Commissioner that written information provided to the Commissioner by the Contractor before the Contract was entered into in relation to the conditions set out in direction 4 of the APMS Directions (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

## **61 Other Grounds for Termination by the Commissioner**

61.1 The Commissioner may serve notice in writing on the Contractor terminating the Contract forthwith, or from such date as may be specified in the notice if:

61.1.1 where this Contract is with an individual, the individual;

61.1.2 where this Contract is with a company, the company or any director or company secretary of the company;

61.1.3 where this Contract is with a partnership, any individual member of the partnership, or the partnership; or

61.1.4 where this Contract is with an Industrial & Provident Society, a Friendly Society or a voluntary organisation or any other body, the Society organisation or other body or

an officer trustee or any other person concerned with the management of the Society organisation or body

falls within Clause 61.2 during the existence of the Contract.

61.2 A person falls within this Clause 61.2 if during the existence of this Contract or at any time within five (5) years prior to signing this Contract:

- 61.2.1 he or it is the subject of a National Disqualification;
- 61.2.2 subject to Clause 61.5, he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any Licensing Body anywhere in the world;
- 61.2.3 subject to Clause 61.6, he has been dismissed (otherwise than by reason of redundancy) from any employment by a Health Service Body unless before the Commissioner has served a notice terminating the Contract pursuant to this Clause 61.2 he is employed by the Health Service Body that dismissed him or by another Health Service Body;
- 61.2.4 he or it is removed from, or refused admission to, a Primary Care List by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of the 2006 Act respectively) unless his or its name has subsequently been included in such a list;
- 61.2.5 he has been convicted in the United Kingdom of murder or an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 or Schedule 1 to the Criminal Procedure (Scotland) Act 1995;
- 61.2.6 he has been convicted in the United Kingdom of a criminal offence other than murder, and has been sentenced to a term of imprisonment of over six (6) months;

- 61.2.7 subject to Clause 61.7, he has been convicted elsewhere of an offence which would, if committed in England and Wales:
- 61.2.7.1 constitute murder; or
  - 61.2.7.2 constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six (6) months;
- 61.2.8 he or it has:
- 61.2.8.1 been adjudged bankrupt or had sequestration of his estate awarded or is a person in relation to whom a moratorium period under a debt relief order (under Part VIIA of the Insolvency Act 1986) applies unless he has been discharged from that bankruptcy or sequestration or the bankruptcy order has been annulled;
  - 61.2.8.2 been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 or Schedule 2A to the Insolvency (Northern Ireland) Order 1989, unless that order has ceased to have effect or has been annulled;
  - 61.2.8.3 been made the subject of a debt relief restrictions order or interim debt relief restrictions order under Schedule 4ZB to the Insolvency Act 1986 unless that order has ceased to have effect or has been annulled;
  - 61.2.8.4 made a composition or arrangement with, or granted a trust deed for, his or its creditors

- unless he or it has been discharged in respect of it;
- 61.2.8.5 been wound up under Part IV of the Insolvency Act 1986;
- 61.2.8.6 had an administrator, administrative receiver or receiver appointed in respect of it; or
- 61.2.8.7 had an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- 61.2.9 he has been:
  - 61.2.9.1 removed from the office of Charity Trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;
  - 61.2.9.2 removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session), from being concerned in the management or control of any body;
  - 61.2.9.3 he is subject to a disqualification order under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986; or
- 61.2.10 he has refused to comply with a request by the Commissioner for him to be medically examined on the

grounds that it is concerned that he is incapable of adequately providing services under the Contract; and

61.2.11 the Commissioner is not satisfied that the Contractor is taking adequate steps to deal with the matter.

61.3 Where the Contract is with a single individual and that individual dies, the Contract shall terminate at the end of the period of seven (7) days after the date of his death unless, before the end of that period the Commissioner has agreed in writing with the Contractor's personal representatives that the Contract should continue for a further period, not exceeding twenty eight (28) days after the end of the period of seven (7) days.

61.4 Clause 61 does not affect any other rights to terminate the Contract which the Commissioner may have under this Contract.

61.5 The Commissioner shall not terminate the Contract pursuant to Clause 61.2.2 where the Commissioner is satisfied that the disqualification or suspension imposed by a Licensing Body outside the United Kingdom does not make the person unsuitable to be a Contractor, or in the case where the Contractor is a company, both a legal and beneficial shareholder, or a director or secretary of the company, as the case may be.

61.6 The Commissioner shall not terminate the Contract pursuant to Clause 61.2.3 until a period of at least three (3) months has elapsed since the date of the dismissal of the person concerned; or if, during that period of time, the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded. The Commissioner may only terminate the Contract in the latter situation if there is no finding of unfair dismissal at the end of those proceedings.

61.7 The Commissioner shall not terminate the Contract pursuant to Clause 61.2.7 where the Commissioner is satisfied that the conviction does not make the person unsuitable to be a Contractor or in the case where the

Contractor is a company, both a legal and beneficial shareholder a director or secretary of the company, as the case may be.

## **62 Termination by the Commissioner for a Serious Breach**

62.1 The Commissioner may serve notice in writing on the Contractor terminating the Contract forthwith or with effect from such date as may be specified in the notice if:

62.1.1 the Contractor has breached the Contract and the Commissioner considers that as a result of that breach, the safety of Patients is at serious risk if the Contract is not terminated;

62.1.2 the Contractor's financial situation is such that the Commissioner considers that the Commissioner is at risk of material financial loss; or

62.1.3 the Contractor undergoes a Change of Control of which the Commissioner, acting reasonably, does not approve.

62.2 If the Contractor breaches the conditions specified in Clauses 54.1 and 54.3 and it comes to the Commissioner's attention that the Contractor has done so, the Commissioner shall be entitled at its sole discretion to serve notice in writing on the Contractor:

62.2.1 terminating the Contract forthwith; or

62.2.2 instructing it to terminate the sub-contracting arrangements that give rise to the breach forthwith, and if it fails to comply with the instruction, the Commissioner shall serve a notice in writing on the Contractor terminating the Contract forthwith.

## **63 Termination by the Commissioner: Remedial Notices and Breach Notices**



- 63.1 Where the Contractor has breached the Contract other than as specified in Clauses 60 to 62.2 and the breach is capable of remedy, the Commissioner shall, before taking any action it is otherwise entitled to take by virtue of the Contract, serve a notice on the Contractor requiring it to remedy the breach (“remedial notice”).
- 63.2 A remedial notice shall specify:
- 63.2.1 details of the breach;
  - 63.2.2 the steps the Contractor must take to the satisfaction of the Commissioner in order to remedy the breach; and
  - 63.2.3 the period during which the steps must be taken (the “notice period”).
- 63.3 The notice period shall, unless the Commissioner is satisfied that a shorter period is necessary to protect the safety of the Contractor’s Patients or protect itself from material financial loss, be no less than twenty eight (28) days from the date that notice is given.
- 63.4 Where the Commissioner is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the notice period, the Commissioner may terminate the Contract with effect from such date as the Commissioner may specify in a further notice to the Contractor.
- 63.5 Where the Contractor has breached the Contract other than as specified in Clauses 60 to 62.2 and the breach is not capable of remedy, the Commissioner may serve notice on the Contractor requiring it not to repeat the breach (“breach notice”).
- 63.6 If, following a breach notice or a remedial notice, the Contractor:
- 63.6.1 repeats the breach that was the subject of the breach notice or the remedial notice; or
  - 63.6.2 otherwise breaches the Contract resulting in either a remedial notice or a further breach notice,

the Commissioner may serve notice on the Contractor terminating the Contract with effect from such date as may be specified in that notice.

- 63.7 If the Contractor has failed to perform any obligation and a breach notice or a remedial notice in respect of that default has been given to the Contractor, the Commissioner may withhold or deduct monies which would otherwise be payable under the Contract in respect of that obligation which is the subject of the default.

## **64 Termination and the Dispute Resolution Procedure**

- 64.1 Where the Commissioner is entitled to serve written notice on the Contractor terminating the Contract pursuant to Clauses 60.1, 61.1, 62, 63.1, the Commissioner shall, in the notice served on the Contractor pursuant to those Clauses, specify a date on which the Contract terminates that is not less than twenty eight (28) days after the date on which the Commissioner has served that notice on the Contractor unless Clause 64.4 applies.
- 64.2 This Clause 64.2 applies if the Commissioner is satisfied that a period less than twenty eight (28) days is necessary in order to protect the safety of the Contractor's Patients or protect itself from material financial loss.
- 64.3 In a case falling within Clause 64.1 where the exception in Clause 64.2 does not apply, where the Contractor invokes the Dispute Resolution Procedure before the end of the period of notice referred to in Clause 64.1, and it notifies the Commissioner in writing that it has done so, the Contract shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in Clause 64.4.
- 64.4 The Contract shall only terminate pursuant to this Clause 64 if and when there has been a determination of the Dispute and that determination permits the Commissioner to terminate the Contract or

the Contractor ceases to pursue the Dispute Resolution Procedure, whichever is the sooner.

- 64.5 If the Commissioner is satisfied that it is necessary to terminate the Contract before the Dispute Resolution Procedure is concluded in order to protect the safety of the Contractor's Patients or protect itself from material financial loss, Clauses 64.3 and 64.4 shall not apply and the Commissioner shall be entitled to confirm by written notice to be served on the Contractor, that the Contract will nevertheless terminate at the end of the period of the notice it served pursuant to Clauses 60.1, 61.1, 62, 63.1.

## **65 Consequences of Termination**

- 65.1 The termination of the Contract, for whatever reason, is without prejudice to the accrued rights of either Party under the Contract.
- 65.2 On the termination of the Contract for any reason, the Contractor shall:
- 65.2.1 subject to the requirements of this Clause 65.2, cease performing any work or carrying out any obligations under the Contract;
  - 65.2.2 co-operate with the Commissioner to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner; and
  - 65.2.3 deliver up to the Commissioner all property belonging to the Commissioner including all documents, forms, computer hardware and software, drugs, Appliances or medical equipment which may be in the Contractor's possession or control.
- 65.3 Subject to Clauses 65.4 to 65.6, the Commissioner's obligation to make payments to the Contractor in accordance with the Contract shall cease on the date of termination of the Contract.
- 65.4 On termination of the Contract or termination of any obligations under the Contract for any reason, the Commissioner shall perform a

reconciliation of the payments made by the Commissioner to the Contractor and the value of the work undertaken by the Contractor under the Contract. The Commissioner shall serve the Contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than twenty eight (28) days after the termination of the Contract.

65.5 If the Contractor disputes the accuracy of the reconciliation, the Contractor may refer the Dispute to the Dispute Resolution Procedure in accordance with the terms of the Contract within twenty eight (28) days beginning on the date on which the Commissioner served the Contractor with written details of the reconciliation. The Parties shall be bound by the determination of the Dispute.

65.6 Each Party shall pay the other any monies due within three (3) months of the date on which the Commissioner served the Contractor with written details of the reconciliation, or the conclusion of the Dispute Resolution Procedure, as the case may be.

65.7 **Should the Contractor:**

65.7.1 breach the Contract entitling the Commissioner to serve written notice on the Contractor terminating the Contract pursuant to Clauses 61, 62 or 63;

65.7.2 issue the Commissioner with notice of termination under Clause 60.1 but cease to perform all or a material part of the Services before the expiry of the notice period;

65.7.3 issue the Commissioner with notice of termination under Clause 60.1 but fail to perform the Services to the Commissioner's reasonable satisfaction during the notice period until the due termination date; or

65.7.4 otherwise cease to provide all or a material part of the Services without notice to the Commissioner in accordance with Clause 60.1,

then, without prejudice to all other remedies available to the Commissioner, the Commissioner shall be entitled to engage replacement contractor(s) for the provision of all or part of the Services on such terms and conditions as the Commissioner sees fit and the Contractor shall immediately pay the Commissioner the cost of engaging the replacement contractor(s) together with all additional expenditure incurred by the Commissioner (including all management costs incurred by the Commissioner) throughout the remainder of the unexpired portion of the due notice period in the case of Clauses 65.7.2 and 65.7.3, or in the case of Clauses 65.7.1 and 65.7.4 for the full notice period. Further, upon request of the Commissioner, the Contractor will grant a licence to the replacement contractor(s) free of charge for such period as the replacement contractor(s) may require and upon such further terms at the replacement contractor(s) may at its absolute discretion determine from the date of the replacement contractor's request to access and use the Practice Premises.

- 65.8 The obligations contained in Clauses 65.1 to 65.7 shall continue to apply notwithstanding the termination of the Contract.

## **66 Dispute Resolution**

- 66.1 The provisions of Schedule 10 shall apply.
- 66.2 Clause 66 shall survive the expiry or termination of the Contract.

## **67 Tupe, Re-tendering and Handover**

- 67.1 On termination or expiry, in whole or in part, of this Contract, the provisions of Schedule 9 will apply.

## **68 Gifts**

- 68.1 The Contractor shall keep a register of gifts which: are given to any of the persons specified in Clause 68.2 by, or on behalf of, a Patient, a relative of a Patient or any person who provides or wishes to provide services to the Contractor or its Patients in connection with the

Contract; and have, in its reasonable opinion, a value of more than £100.00.

68.2 The persons referred to in Clause 68.1 are:

- 68.2.1 any person employed by the Contractor for the purposes of the Contract;
- 68.2.2 any General Medical Practitioner engaged by the Contractor for the purposes of the Contract;
- 68.2.3 if the Contractor is a company, any directors or company secretary of the company;
- 68.2.4 if the Contractor is a partnership, any member of the partnership;
- 68.2.5 if the Contractor is an Industrial and Provident Society, Friendly Society, Voluntary Organisation as defined in the 2006 Act or other body any officer, trustee or any other person concerned with the management of the Contractor;
- 68.2.6 the Contractor;
- 68.2.7 any spouse or civil partner of a person specified in Clauses 68.2.1 to 68.2.2; or
- 68.2.8 any person (whether or not of the opposite sex) whose relationship with a person specified in Clauses 68.2.1 to 68.2.2 has the characteristics of the relationship between husband and wife.

68.3 Clause 68.1 does not apply where:

- 68.3.1 there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the Contractor;
- 68.3.2 the Contractor is not aware of the gift; or
- 68.3.3 the Contractor is not aware that the donor wishes to provide services to the Contractor.

68.4 The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within Clause 68.1 and which are given to the persons specified in Clauses 68.2.

68.5 The register referred to in Clause 68.1 shall include the following information:

68.5.1 the name of the donor;

68.5.2 in a case where the donor is a Patient, the Patient's National Health Service number or, if the number is not known, his address;

68.5.3 in any other case, the address of the donor;

68.5.4 the nature of the gift;

68.5.5 the estimated value of the gift; and

68.5.6 the name of the person or persons who received the gift.

68.6 The Contractor shall make the register available to the Commissioner on request.

## **69 Compliance with Legislation and Guidance**

69.1 The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the Commissioner, the Secretary of State, local authority, and the Department of Health including, without limitation, to requirements specified in the Service Specification in respect of the exercise of their functions under the 2006 Act.

### **OTHER PROVISIONS**

## **70 Non-survival of Terms**

70.1 Unless expressly provided, no term of the Contract shall survive expiry or termination of the Contract. Express provision is (hereby or elsewhere) made in relation to:

70.1.1 Clause 1.1 (Status of Contract);

- 70.1.2 Clause 46 (Counter Fraud and Security Management);
- 70.1.3 Clause 49 (Fees and Charges);
- 70.1.4 Clause 51 (Indemnity);
- 70.1.5 Clause 52 (Insurance);
- 70.1.6 Clause 53 and Schedule 5 (Complaints);
- 70.1.7 Clauses 65.1 to 65.6 (Consequences of Termination);
- 70.1.8 Clause 66 (Dispute Resolution Procedures);
- 70.1.9 Clause 72 (Governing Law and Jurisdiction); and
- 70.1.10 Clause 81 (Confidentiality);
- 70.1.11 Clause 82 (Bribery Act 2010).

## **71 Entire Contract**

The Contract constitutes the entire Contract between the Parties with respect to its subject matter and supersedes any prior Contracts, negotiations, promises, conditions or representations, whether written or oral, and the Parties confirm that they did not enter into the Contract on the basis of any representations that are not expressly incorporated into the Contract. However, nothing in the Contract purports to exclude liability on the part of either Party for fraudulent misrepresentation.

## **72 Governing Law and Jurisdiction**

- 72.1 The Contract shall be governed by and construed in accordance with English law.
- 72.2 Without prejudice to the Dispute Resolution Procedure contained in the Contract, in relation to any legal action or proceedings to enforce the Contract or arising out of or in connection with this Contract (including non-contractual disputes or claims), each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.



- 72.3       Clauses 72.1 and 72.2 shall continue to apply notwithstanding the termination of the Contract.

## **73       Waiver, Delay or Failure to Exercise Rights**

- 73.1       The failure or delay by either Party to enforce any one or more of the terms or conditions of the Contract shall not operate as a waiver of them, or of the right at any time subsequently to enforce all terms and conditions of the Contract.

## **74       Relationship between the Parties**

- 74.1       The Contract is a contract for the provision of services. The Contractor is an independent provider of services and is not an employee, partner or agent of the Commissioner. The Contractor must not represent or conduct its activities so as to give the impression that it is the employee, partner or agent of the Commissioner.
- 74.2       Where the Contractor provides Essential Services to Patients on its List of Patients, the Commissioner shall require the Contractor to be a member of a CCG.
- 74.3       Where the Contractor is required to be a member of a CCG in accordance with Clause 74.2, the Contractor shall appoint one individual, who is a Health Care Professional, to act on the Contractor's behalf in the dealings between the Contractor and the CCG to which is belongs.
- 74.4       The Commissioner does not by entering into the Contract, and shall not as a result of anything done by the Contractor in connection with the performance of the Contract, incur any contractual liability to any other person.
- 74.5       The Contract does not create any right enforceable by any person not a party to it under the Contracts (Rights of Third Parties) Act 1999.
- 74.6       The Contractor shall not delegate its obligations or otherwise give, sell, assign or otherwise dispose of the benefit of any of its rights, under the

Contract without the prior written authorisation of the Commissioner in accordance with Clause 54.

- 74.7 The Commissioner may give, sell, assign, or otherwise dispose of the benefit of its rights under the Contract to a successor body as may be directed by the Secretary of State.

## **75 Force Majeure**

- 75.1 Neither Party shall be entitled to bring a claim for a breach of obligations under the Contract by the Affected Party nor shall the Affected Party incur any liability to the other Party for any losses or damages incurred by the other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.
- 75.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on its obligations of the Affected Party and any action proposed to mitigate its effect.
- 75.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate steps to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.
- 75.4 Unless the Affected Party takes such steps, Clause 75.1 shall not have the effect of absolving it from its obligations under this Contract. For the avoidance of doubt, any actions or omissions of either Party's personnel or any failures of either Party's systems, procedures, premises or equipment shall not be deemed to be circumstances or events beyond the reasonable control of the relevant Party for the purposes of this Clause 75.4 unless the cause of failure was beyond reasonable control.
- 75.5 If the Affected Party is delayed or prevented from performing its obligations and duties under the Contract for a continuous period of

three (3) months, then either Party may terminate the Contract by notice in writing within such period as is reasonable in the circumstances (which shall be no shorter than twenty eight (28) days).

- 75.6 The termination shall not take effect at the end of the notice period if the affected Party is able to resume performance of its obligations and duties under the Contract within the period of notice specified in accordance with Clause 75.2 or if the other Party otherwise consents.

## **76 Severance**

- 76.1 Subject to Clauses 76.2 and 76.3, if any term of the Contract is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such term shall, to the extent required, be deemed to be deleted from the Contract and shall not affect the validity, lawfulness or enforceability of any other terms of the Contract.
- 76.2 If, in the reasonable opinion of either Party, the effect of such a deletion is to undermine the purpose of the Contract or materially prejudice the position of either Party, the Parties shall negotiate in good faith in order to agree a suitable alternative term to replace the deleted term or a suitable amendment to the Contract.
- 76.3 If the Parties are unable to reach agreement as to the suitable alternative term or amendment within a reasonable period of commencement of the negotiations, then the Parties may refer the Dispute for determination in accordance with the Dispute Resolution Procedure set out in Clause 66.

## **77 Service of Notice**

- 77.1 Save as otherwise specified in the Contract or where the context otherwise requires, any notice or other information required or authorised by the Contract to be given by either Party to the other Party must be in writing and may be served:
- 77.1.1 personally;

- 77.1.2 by post, or in the case of any notice served pursuant to Clause 57 (Variation) and Clauses 58 to 63 (Termination), registered or recorded delivery post;
  - 77.1.3 by telex, or facsimile transmission (the latter confirmed by telex or post);
  - 77.1.4 unless the context otherwise requires and except in Clause 57.1 electronic mail; or
  - 77.1.5 by any other means which the Commissioner specifies by notice to the Contractor.
- 77.2 Any notice or other information shall be sent to the address specified in the Contract or such other address as the Commissioner or the Contractor has notified to the other.
- 77.3 Any notice or other information shall be deemed to have been served or given:
  - 77.3.1 if it was served personally, at the time of service;
  - 77.3.2 if it was served by post, two (2) Working Days after it was posted; and
  - 77.3.3 if it was served by telex, electronic mail or facsimile transmission, if sent during Core Hours then at the time of transmission and if sent outside Core Hours then on the following Working Day.
- 77.4 Where notice or other information is not given or sent in accordance with Clauses 77.1 to 77.3, such notice or other information is invalid unless the person receiving it elects, in writing, to treat it as valid.

## **78 Discrimination**

- 78.1 The Contractor shall:
  - 78.1.1 ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Part Time Workers

(Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Equality Act 2010 or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Contractor shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 78; and

78.1.2 in the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with the Commissioner in light of the Commissioner's obligations to comply with statutory equality duties. The Contractor shall take such steps as the Commissioner considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation, age, marriage and civil partnership, pregnancy and maternity, and gender assignment in the provision of the Services.

78.2 The Contractor shall fully indemnify and keep the Commissioner fully indemnified on demand against all claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Commissioner arising out of or in connection with any investigation conducted or any proceedings brought under the legislation referred to in Clause 78.1 above due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

78.3 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by this Clause 78.

## **79 Data Protection**

- 79.1 The Contractor shall comply with the Data Protection Act 1998 (the “1998 Act”) and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the Commissioner by the seventh data protection principle (the “Seventh Principle”) set out in the 1998 Act, namely:
- 79.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Commissioner by the Seventh Principle;
  - 79.1.2 only to process Personal Data for and on behalf of the Commissioner, in accordance with the instructions of the Commissioner and for the purpose of performing the Services in accordance with the Contract and to ensure compliance with the 1998 Act;
  - 79.1.3 to allow the Commissioner to audit the Contractor’s compliance with the requirements of this Clause 79.1 on reasonable notice and/or to provide the Commissioner with evidence of its compliance with the obligations set out in this Clause 79.1. and
- 79.2 Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the Commissioner with reasonable assistance in complying with subject access requests served on the Commissioner under Section 7 of the 1998 Act and the Contractor consulting with the Commissioner prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

## **80 Freedom of Information**

- 80.1 The Contractor shall use all reasonable efforts to assist the Commissioner to comply with such obligations as are imposed on the Commissioner by the Freedom of Information Act 2000 (the “2000 Act”)

and the Code of Openness in the NHS (the “Code”) including providing the Commissioner with reasonable assistance in complying with any request for information in connection with the Services served on the Commissioner under the 2000 Act or the Code and processing information provided by the Commissioner in accordance with a record management system which complies with the Lord Chancellor’s records management recommendations and code of conduct under section 46 of that Act.

## **81 Confidentiality**

- 81.1 Subject always to the obligations of the Parties under statute or common law, in respect of such Confidential Information it may receive from the other Party (the “Discloser”), each Party (the “Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract.
- 81.2 The provisions of Clause 81.1 shall not apply to any Confidential Information which:
- 81.2.1 is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
  - 81.2.2 is obtained by a third party who is lawfully authorised to disclose such information;
  - 81.2.3 is authorised for release by the prior written consent of the Discloser; or
  - 81.2.4 is identified as no longer needing to be regarded as confidential in accordance with any relevant timescale set out in Schedule 7 relating to that class of information
- 81.3 Nothing in Clause 81.1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial,

administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 81 as if any reference to the Contractor in Clause 81.1 were a reference to such holding company.

81.4 The Contractor authorises the Commissioner to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the Commissioner from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The Commissioner shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Commissioner shall not without good reason claim that the lowest price available in the market is the realistic market price.

81.5 The provisions of Clauses 81.1 and 81.4 shall continue in force following termination of the Contract for any reason whatsoever and without limit in time.

## **82 Bribery Act 2010**

82.1 The Contractor shall:

- 82.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- 82.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery



Act 2010 if such activity, practice or conduct had been carried out in the UK;

- 82.1.3 comply with the Commissioner's Anti-Bribery Policy as may be provided from the Commissioner to the Contractor from time to time ("Relevant Policy").
- 82.1.4 have and shall maintain in place throughout the period of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and this Clause 82, and will enforce them where appropriate;
- 82.1.5 in addition to its obligations under this Clause 82, report to and acquire authority from the Commissioner before providing any form of gift, gratuity or hospitality to any party in connection with the Contract;
- 82.1.6 ensure that any offer or provision of any form of gift, gratuity or hospitality complies with the Relevant Policy and, where relevant, the Commissioner's hospitality, gifts and sponsorship policy or policies;
- 82.1.7 promptly report to the Commissioner any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract.

82.2 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with the Contract does so only on the basis of a written Contract which imposes on and secures from such person on terms equivalent to those imposed on the Contractor in this Clause 82 ("Relevant Terms"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Commissioner for any breach by such persons of any of the Relevant Terms.

- 82.3 For the purpose of this Clause 82, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 82 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.
- 82.4 The Contractor shall fully indemnify and keep fully indemnified on demand the Commissioner against any losses, liabilities, damages, costs including but not limited to legal fees and expenses incurred by, or awarded against, the Commissioner as a result of any breach of this Clause 82 by the Contractor or any breach of provisions equivalent to this Clause 82 in any subcontract by any subcontractor.
- 82.5 Additional audit and record keeping:
- 82.5.1 the Contractor shall keep (either at its normal place of business or such other location as is notified to the Commissioner) detailed, accurate and up to date records and books of account showing all payments made by the Contractor in connection with the Contract and the steps taken by the Contractor to comply with the Relevant Requirements, the Relevant Policies and Clause 82 in each case during the previous twelve years. The Contractor shall ensure that such records and books of accounts are sufficient to enable the Commissioner to verify the Contractor's compliance with its obligations under this Clause 82;
- 82.5.2 the Contractor shall permit the Commissioner and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 82 to access and take copies of the Contractor's records and any other information held at the Contractor's Premises (or such

other premises as are notified to the Commissioner in accordance with clause 82.5.2) and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this Clause 82. Such audit rights shall continue for three years after termination of the Contract. The Contractor shall give all necessary assistance to the conduct of such audits during the terms of the Contract and for a period of seven years after termination of the Contract.

82.5.3 Audit access by any third party representative of the Commissioner shall be subject to such representative agreeing confidentiality obligations equivalent to those in Clause 81 (Confidentiality) in respect of the information obtained, always provided that all information obtained may be disclosed to the Commissioner.

82.6 The Contractor warrants and represents that:

82.6.1 neither the Contractor nor any of its officers, employees or other persons associated with it:

82.6.1.1 has been convicted of any offence involving bribery or corruption, fraud or dishonesty;

82.6.1.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

82.6.1.3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible or potentially ineligible for

participation in government procurement programmes or other government Contracts;

82.7 The Contractor shall promptly notify the Commissioner if, at any time during the term of the Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 82.6 at the relevant time.

82.8 Breach of this Clause 82 shall be deemed a material breach under Clause 62 (Termination for a serious Breach).

82.9 If the Commissioner terminates the Contract for breach of this Clause 82, the Contractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or Contracts with additional third parties entered into before termination.

82.10 Regardless of any other provision in the Contract, the Commissioner shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

82.11 This clause 82 shall survive the expiry or termination of the Contract.

## **83 NHS Branding**

83.1 The Contractor shall ensure that the Practice Premises are clearly designated and branded to Patients and visitors as facilities at which NHS services are to be provided. The Contractor may use its own branding in respect of the Practice Premises and in communications with Patients provided that such branding does not dominate or conflict with the NHS branding and complies with the relevant NHS Identity Guidelines currently in force.

## **84 Sponsorship**

84.1 The Contractor shall not enter into any arrangements for the sponsorship by any person of the Practice Premises, the Services or anything connected to this Contract without the prior written consent of

the Commissioner, which the latter, in its absolute discretion, may withhold.

## **85 Administration**

The provisions of Schedule 7 shall have effect for the purposes of identifying the Parties' Representatives.

## **86 Intellectual Property**

The Contractor agrees that any intellectual property developed in connection with or related to this Contract shall belong to the Commissioner.

## **87 Counterparts**

The Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties, shall constitute a full original of this Contract for all purposes

IN WITNESS WHEREOF, the Parties have executed this Contract in duplicate the day and year first written above:

For: The Commissioner

By:..... (Full Name)

Title:.....

Date of Signature.....

For: The Contractor

By: ..... (Full Name)

Title.....

Organisation:.....

Date of Signature.....

## **Schedule 1**

### **Definitions and Interpretation**

- 1.1 In this Contract unless the context otherwise requires:
- 1.1.1 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
  - 1.1.2 reference to any person may include a reference to any firm, company or corporation;
  - 1.1.3 reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate, and reference to a working day means any day except Saturday, Sunday, Good Friday, Christmas Day and any Bank Holiday;
  - 1.1.4 the headings in the Contract are inserted for convenience only and do not affect the construction or interpretation of the Contract;
  - 1.1.5 the schedules to the Contract are and shall be construed as being part of the Contract. In the event of conflict between the terms of any schedule and the main body of the Contract, the provisions of the main body of the Contract shall prevail save in the case of an inconsistency with Schedule 2, Service Specification, in which event the terms of Schedule 2 shall prevail (other than where the relevant provisions of Schedule 2 are not compliant with any relevant law, rules, guidance or Good Practice);
  - 1.1.6 reference to any statute or statutory provision or direction includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of the Contract), and all statutory instruments or orders made pursuant to it;
  - 1.1.7 any obligation relating to the completion and submission of any form that the Contractor is required to complete and submit to the

Commissioner includes the obligation to complete and submit the form in such a format or formats (electronic, paper or otherwise) as the Commissioner may specify;

- 1.1.8 any obligation on the Contractor to have systems, procedures or controls includes the obligation effectively to operate them;
  - 1.1.9 where the Contract imposes an obligation on a Party, that Party must comply with it and must take all reasonable steps to ensure that its personnel and Contractors (except the other Party) comply with it; and
  - 1.1.10 the Parties shall, so far as is possible, interpret the provisions of the Contract consistently with the European Convention on Human Rights, EU law, the APMS Directions, and any other relevant regulations, orders or directions made under the 1977, 2006 and 2012 Acts.
  - 1.1.11 the clause numbers and cross-reference are inserted for convenience only and do not affect the construction and interpretation of the Contract. For the avoidance of doubt, in the event of any apparent inconsistency in, without limitation, any clause numbers, defined terms and/or cross-references the relevant provisions of the APMS Directions and PMS Agreements Regulations, shall take precedence.
- 1.2 The following terms and phrases shall have the following meanings for the purposes of the Contract:

<b>2006 Act</b>	the National Health Service Act 2006, as amended by the Health and Social Care Act 2012;
<b>2012 Act</b>	the Health and Social Care Act 2012;
<b>Accountable GP</b>	A general medical practitioner assigned to a Registered Patient in accordance with Clauses 31.121 or 31.133;



<b>Additional Services</b>	has the meaning given in the GMS Contracts Regulations;
<b>Advanced Electronic Signature</b>	<p>an electronic signature which is:</p> <ul style="list-style-type: none"><li>(a) uniquely linked to the signatory;</li><li>(b) capable of identifying the signatory;</li><li>(c) created using means that the signatory can maintain under their sole control; and</li><li>(d) linked to the data to which it relates in such a manner that any subsequent change of data is detectable;</li></ul>
<b>Affected Party</b>	in the context of Clause 75, the Party whose performance of obligations under the Contract has been affected by the Force Majeure Event;
<b>Alert Letter</b>	a letter from a recognised issuing body in accordance with Department of Health guidance alerting the National Health Service or any of its bodies of a doctor or other registered Health Care Professional whose performance or conduct could place staff or Patients at risk;
<b>Annual Report</b>	the annual report referred to in clauses 10.7 – 10.9;
<b>APMS Directions</b>	the Alternative Provider Medical Services Directions of 2013 (as amended by the

Alternative Provider Medical Services (Amendment) Directions 2014, the Alternative Provider Medical Services (Amendment No.2) Directions 2014 and by the Alternative Provider Medical Services (Amendment) Directions 2015);

**Appliance**

an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 126 of the 2006 Act;

**Approved Medical Practice**

shall be construed in accordance with section 11(4) of the Medical Act 1983 as amended or replaced from time to time;

**Armed Forces of the Crown**

means the forces that are “regular forces” or “reserve forces” within the meaning given in section 374 of the Armed Forces Act 2006 (definitions applying for the purposes of the whole Act)

**Assessment Panel**

the panel appointed by the Commissioner under Clause 31.108 of this Contract;

**Bank Holiday**

any day that is specified or proclaimed as a bank holiday in England pursuant to section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

**Batch Issue**

has the meaning given in the NHS (PMS Agreements Regulations 2004 (SI: 2004/627);

**BBV Guidelines**

all and any circulars, instructions, directions, guidance, regulations, codes

	and/or requirements of the NHS from time to time in respect of Blood Borne Viruses and Exposure Prone Procedures (including without limitation the Hepatitis Codes);
<b>Blood Borne Viruses</b>	hepatitis B, hepatitis C and Human Immunodeficiency Virus (HIV) and any other conditions or diseases which are recognised within NHS requirements to represent a material risk of being communicated between a member of Contractor Staff and a Patient during an Exposure Prone Procedure;
<b>CCG</b>	a Clinical Commissioning Group;
<b>CEDR</b>	the Centre for Effective Dispute Resolution;
<b>CCT</b>	Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983;
<b>Change of Control</b>	a change in the Controlling Interest of the Contractor or its Holding Company;
<b>Charity Trustee</b>	one of the persons having the general control and management of the administration of a charity;
<b>Chemist</b>	means  (a) a registered pharmacist;  (b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968; or

	<p>(c) a supplier of Appliances,</p> <p>who is included in the list of the Commissioner under Part 7 the 2006 Act or who provides local pharmaceutical services in accordance with LPS arrangements;</p>
<b>Child or Children</b>	a person or people under the age of 16 years;
<b>Chiropodist or Podiatrist Independent Prescriber</b>	a chiropodist or podiatrist who is registered in Part 2 of the register maintained under article 5 of the Health and Social Work Professions Order 2001 (establishment and maintenance of register), and against whose name in that register is recorded an annotation signifying that the chiropodist or podiatrist is qualified to order drugs, medicines and Appliances as a chiropodist or podiatrist independent prescriber;
<b>Clinical Correspondence</b>	means all correspondence in writing, whether in electronic form or otherwise, between the Contractor and other health service providers concerning or arising out of patient attendance and treatment at the Practice Premises including referrals made by letter or by any other means;
<b>Clinical Staff</b>	Contractor Staff with a medical or clinical qualification that is registered with a statutory professional body;
<b>Code of Practice on</b>	the Criminal Records Bureau Code of

<b>Disclosure</b>	Practice for Registered Persons and other recipients of Disclosure Information published by the Home Office under the Police Act 1997 (revised April 2009);
<b>Commencement Date</b>	<b>[INSERT DATE HERE]</b>
<b>Commissioner</b>	the National Health Service Commissioning Board constituted by the 2012 Act and 'NHS England' shall have the same meaning
<b>Complaints Regulations</b>	the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009;
<b>Confidential Information</b>	information data and material of any nature which either Party may receive or obtain in connection with the operation of the Contract and:  (a) the release of which is likely to prejudice the commercial interests of the Commissioner or (as the case may be) the Contractor respectively; or  (b) which is a trade secret;
<b>Confidentiality Directions</b>	the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Contractor Medical Services Directions 2013 as amended or updated from time to time;

<b>Contractor</b>	<b>[INSERT DETAILS HERE]</b>
<b>Contractor's Premises</b>	means the Practice Premises
<b>Contract Price</b>	the price as set out in and payable by the Commissioner to the Contractor in accordance with the provisions of Schedule 4;
<b>Contract Year</b>	a year commencing on the Commencement Date and on each successive annual anniversary of the Commencement Date and ending on the day before each annual successive anniversary of the Commencement Date;
<b>Contract</b>	this contract concluded between the Commissioner and the Contractor;
<b>Contractor Staff</b>	the employees, directors, officers, agents, subContractors and workmen of the Contractor who are to be engaged in the performance of the Contractor's obligations under this Contract including Transferring Employees, self-employed doctors, locums or Contractors;
<b>Controlling Interest</b>	an interest in shares giving to the holder or holder's control of the Contractor (or its Holding Company) within the meaning of section 1124 of the Corporation Tax Act 2010;
<b>Convictions</b>	other than in relation to minor road traffic offences, any previous or pending

prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement to that Order);

**Core Hours**

unless expressed more extensively, the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or Bank Holidays;

**CRC Position**

any position in relation to which Standard Disclosure is permitted in accordance with section 113 of the Police Act 1997 as amended or replaced from time to time and, where applicable, the Police Act 1997 (Criminal Records) (Registration) Regulations 2006 and the Code of Practice on Disclosure but to which Enhanced Disclosure is not permitted;

**Data Controller**

shall have the meaning ascribed to it under the Data Protection Act 1998;

**Disclosure**

shall have the meaning in the Code of Practice on Disclosure;

**Dispenser**

a Chemist, medical practitioner or Contractor whom a Patient wishes to dispense his Electronic Prescriptions;

<b>Dispensing Services</b>	the provision of drugs, medicines or Appliances that may be provided as pharmaceutical services by a medical practitioner in accordance with arrangements made under section 126 (Arrangements for Pharmaceutical Services) and section 129 (Regulations as to Pharmaceutical Services) of the 2006 Act;
<b>Dispute</b>	a dispute, conflict or other disagreement between the Parties arising out of or in connection with this Contract;
<b>Dispute Resolution Procedure</b>	the procedure detailed in Clause 66 of the Contract;
<b>Drug Tariff</b>	the publication known as the Drug Tariff which is published by the Secretary of State and which is referred to in section 127(4) (Arrangements for Additional Pharmaceutical Services) of the 2006 Act;
<b>Electronic Communication</b>	has the same meaning as in section 15 of the Electronic Communications Act 2000;
<b>Electronic Prescription Form</b>	a prescription form which falls within paragraph (b) of the definition of "Prescription Form";
<b>Electronic Prescription Service</b>	the service of that name which is operated by the Health and Social Care Information Centre;
<b>Electronic Prescription</b>	an Electronic Prescription Form or



	Electronic Repeatable Prescription;
<b>Electronic Repeatable Prescription</b>	a prescription which falls within paragraph (b) of the definition of “Repeatable Prescription”;
<b>Enhanced Disclosure</b>	shall have the meaning set out in the Police Act 1997 and the Code of Practice on Disclosure;
<b>Enhanced Services</b>	has the meaning given in the GMS Contract s Regulations;
<b>Equipment</b>	anything save for the Practice Premises and the staff that the Contractor may use in the delivery of the Services;
<b>ERC Position</b>	any position in relation to which Enhanced Disclosure is permitted in accordance with section 115 of the Police Act 1997 as amended or replaced from time to time and, where applicable, the Police Act 1997 (Criminal Records) (Registration) Regulations 2006 and the Code of Practice on Disclosure;
<b>Essential Services</b>	the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations, or services that are equivalent to those services, and which are provided during Core Hours;
<b>Exempt Staff</b>	any person employed by an NHS Body;
<b>Existing Contract or Other Arrangement</b>	a contract or arrangement that was entered into prior to 1st April 2010 and which

	remains in force on 1st April 2010;
<b>Expert</b>	the person designated to determine the Dispute in accordance with Schedule 10;
<b>Expert Determination Notice</b>	notice in writing showing an intention to refer a Dispute for expert determination;
<b>Expiry Date</b>	<b>[INSERT DATE HERE]</b> or such other date as may be fixed under Clause 2;
<b>Exposure Prone Procedure</b>	any invasive procedure within the Services where there is a risk that injury to a member of Contractor Staff may result in the exposure of a Patient's open tissues to the blood of the worker including without limitation any procedures where the member of Contractor Staff's gloved hands may be in contact with sharp instruments, needle tips or sharp tissues (such as spicules of bone or teeth) inside a Patient's open body cavity, wound or confined anatomical space where the hands or fingertips may not be completely visible at all times;
<b>Force Majeure Event</b>	one or more of the following to the extent that it is not attributable to a Party or Party's staff, officers, employees or agents: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of

terrorism; explosion; fire; flood;  
extraordinarily severe weather conditions  
which are both unforeseen and for which  
precautions are not customarily taken by  
prudent business organisations so as to  
avoid or mitigate the impact thereof;  
industrial action which affects the provision  
of the Services, but which is not confined  
to the workforce of the Party concerned or  
is site specific; pestilence; the actions of  
governmental authorities to the extent that  
such actions are implemented either  
pursuant to emergency powers or  
otherwise outside the usual course of  
governmental business; or Act of God, and  
could not have been avoided or mitigated  
by the exercise of all reasonable care by  
that Party and further provided that such  
event materially affects the ability of the  
Party seeking to rely upon it to perform its  
obligations under the Contract;

**General Medical Practitioner  
or GP**

except where the context otherwise  
requires, a medical practitioner whose  
name is included in the General  
Practitioner Register kept by the General  
Medical Council;

**Geographical Number**

a number which has a geographical area  
code as its prefix;

**GMS Contracts Regulations**

the National Health Service (General  
Medical Services Contracts) Regulations  
2004;

**Good Practice**

using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services Contractor providing clinical services and/or engaged in operations similar to the Services under the same or similar to the obligations of the relevant party under this Contract whilst at the same time complying with any specific standards set out in this Contract or notified to the Contractor by the Commissioner from time to time;

**Governing Body**

in respect of either Party, the board of directors, governing body, executive team or other body, as the case may be, having overall responsibility for the actions of that Party;

**GP2GP Facility**

means the facility provided by the Commissioner to the Contractor which enables the electronic health records of a Registered Patient which are held on the computerised clinical systems of the Contractor to be transferred securely and directly to another provider of primary medical services with which the Patient has registered;

**GP Registrar**

a medical practitioner who is being trained in general practice by a general medical

	practitioner who is approved under section 34I of the Medical Act 1983 for the purpose of providing training under that section whether as part of training leading to a CCT or otherwise;
<b>GPSOC accredited computer systems and software”</b>	means computer systems and software which have been accredited by the Secretary of State or another person in accordance with “General Practice Systems of Choice Level 2”
<b>Health and Social Services Board</b>	a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972;
<b>Health and Social Services Trust</b>	a Health and Social Services Trust established under article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991;
<b>Health Care Professional</b>	has the same meaning as in section 93 of the 2006 Act;
<b>Health Board</b>	a Health Board established under section 2 of the National Health Service (Scotland) Act 1978;
<b>Health Check</b>	means a consultation undertaken by the Contractor in the course of which it must make such inquiries and undertake such examinations of the Patient as appear to it to be appropriate in all the circumstances;
<b>Health Service Body</b>	unless the context otherwise requires, has

the meaning given to it in section 9(4) of the 2006 Act;

**Holding Company**

in relation to the Contractor means "holding company" as defined in section 1159 of the Companies Act 2006 and any other company which is itself a Holding Company (as so defined) of a company which is itself a **Holding** Company of the Contractor;

**Home Oxygen Order Form**

a form provided by the Commissioner and issued by a Health Care Professional to authorise a person to supply home oxygen services to a Patient requiring oxygen therapy at home;

**Home Oxygen Services**

any of the following forms of oxygen therapy or supply:

- (a) ambulatory oxygen supply;
- (b) urgent supply;
- (c) hospital discharge supply;
- (d) long term oxygen therapy; and
- (e) short burst oxygen therapy;

**Independent Nurse  
Prescriber**

a person:

- (a) who is either engaged or employed by the Contractor;
- (b) who is registered in the Nursing and Midwifery Register; and

- (c) in respect of whom an annotation signifying that he is qualified to order drugs, medicines and Appliances from as a community practitioner nurse prescriber, a nurse independent prescriber or as a nurse independent/supplementary prescriber;

**Law**

- (a) any applicable statute or proclamation or any delegated or subordinate Law;
- (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (c) any NHS Requirement, applicable code of practice, national minimum standard, guidance, direction or determination with which the Contractor is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Contractor by the Commissioner; and
- (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales

in each case in force in England and Wales;

<b>Licensing Authority</b>	shall be construed in accordance with section 6(3) of the Medicines Act 1968 as amended or replaced from time to time;
<b>Licensing Body</b>	any body that licenses or regulates any profession;
<b>List of Patients</b>	in relation to the Contractor, the list maintained in respect of the Contractor by the Commissioner under direction 15 of the APMS Directions;
<b>Listed Medicines</b>	the drugs mentioned in regulation 13(1) of the National Health Service (Charges for Drugs and Appliances) Regulations 2015;
<b>Listed Medicines Voucher</b>	a form provided by the Commissioner for use for the purpose of ordering a Listed Medicine;
<b>Loaned Equipment</b>	if any, equipment owned by the Commissioner which is loaned to the Contractor for the purposes of the Contract in accordance with clause 6;
<b>Local HealthWatch Organisation</b>	the body corporate established in accordance with the requirements of the 2012 Act (and any subsequent regulations) that will provide services the same or similar to those services previously provided by the Local Involvement Network;
<b>Local Medical Committee</b>	a committee recognised by the Commissioner under section 97 of the



2006 Act;

**Mandatory Term**

a term required to be included in the Contract by the APMS Directions;

**Medical Card**

a card issued by the Commissioner, Local Health Commissioner, Health Authority, Health Commissioner or Health and Social Services Commissioner to a person for the purpose of enabling him to obtain, or establishing his title to receive, primary medical services;

**Medical Officer**

a medical practitioner who is:

- (a) employed or engaged by the Department for Work and Pensions; or
- (b) provided by an organisation in pursuance of a contract entered into with the Secretary of State for Work and Pensions;

**Medical Performers List**

a list of medical practitioners maintained and published by the Commissioner in accordance with section 91(1) (Persons Performing Primary Medical Services) of the 2006 Act;

**Medical Register**

the registers kept under section 2 of the Medical Act 1983;

**National Disqualification**

- (a) a decision made by the Family Health Services Appeal Authority under section 159 of the 2006 Act or

under regulations corresponding to that section,

- (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 159 of the 2006 Act, or
- (c) a decision by the NHS Tribunal which is treated as a national disqualification by the Family Health Services Appeal Authority by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001 or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002;

<b>Negotiation Period</b>	the period of 15 Operational Days following receipt of the first offer to negotiate;
<b>NHS Body</b>	shall have the meaning as set out in Clause 55.2.1;
<b>NHS Contract</b>	has the meaning assigned to it in section 9 of the 2006 Act;
<b>NHS Number</b>	means, in relation to a Registered Patient, the number consisting of 10 numeric digits which serves as the national unique identifier used for the purpose of safely, accurately and efficiently sharing information relating to that patient across

	the whole of the health service in England;
<b>NHS Pensions</b>	NHS Pensions, as part of the NHS Business Services Authority;
<b>NHS Requirement</b>	all mandatory NHS requirements and any similar official requests, requirements and NHS standards and recommendations having similar status for the time being in force, but only to the extent the same are published and publically available (whether on the Department of Health website, on the website of a Competent Authority or otherwise) or the existence and contents of them have been notified to the Contractor by the Commissioner;
<b>NHSTDA</b>	the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 SI 2012/901;
<b>NHS Tribunal</b>	the Tribunal constituted under section 46 of the National Health Service Act 1977 for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales only until 26th August 2002;
<b>Nominated Dispenser</b>	a Chemist, medical practitioner or Contractor who has been nominated in respect of a Patient and the details of that nomination are held in respect of that

	Patient in the Patient Demographics Service, which is operated by the Information Centre for Health and Social Care;
<b>Non-Electronic Prescription Form</b>	<p>a form for the purpose of ordering a drug, medicine or Appliance which is;</p> <ul style="list-style-type: none"><li>(a) provided by the Commissioner, a local authority or the Secretary of State;</li><li>(b) issued by the Prescriber;</li><li>(c) indicates that the drug, medicine or Appliance ordered may be provided more than once; and</li><li>(d) specifies the number of occasions on which they may be provided;</li></ul>
<b>Non-Electronic Repeatable Prescription</b>	a Prescription which falls within clause (a)(i) of the definition of “Repeatable Prescription”;
<b>Nursing and Midwifery Register</b>	the register maintained by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001;
<b>Nursing Officer</b>	<p>a health care professional who is registered on the Nursing and Midwifery Register and—</p> <ul style="list-style-type: none"><li>(i) employed or engaged by the Department for Work and Pensions, or</li></ul>

- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;

**Occupational Therapist**

a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health and Social Work Professions Order 2001 relating to occupational therapists and—

- (i) employed or engaged by the Department for Work and Pensions, or
- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;

**Operational Day**

a day other than a Saturday, Sunday or bank holiday in England;

**Out of Hours Period**

- (a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
- (b) the period between 6.30pm on Friday and 8am on the following Monday; and
- (c) Good Friday, Christmas Day and Bank Holidays;

<b>Out of Hours Services</b>	services required to be provided in all or part of the Out of Hours Period which would be Essential Services if provided by a Contractor to its Registered Patients in APMS Core Hours;
<b>Outer Boundary Area</b>	the area outside the Patient Registration Area more particularly described in clause 31;
<b>Overseas Disclosure</b>	disclosure of convictions or other related matters from any country outside the United Kingdom by use of the relevant country's criminal records disclosure system;
<b>Overseas Person</b>	any person who is a citizen of or holds a Relevant Professional Qualification from any country outside the UK or who has worked in any country outside the UK;
<b>Parent</b>	includes, in relation to any Child, any adult who, in the opinion of the Contractor, is for the time being discharging in respect of that Child the obligations normally attaching to a parent in respect of a Child;
<b>Party</b>	either the Commissioner or the Contractor, and "Parties" shall be construed accordingly;
<b>Patient Registration Area</b>	the area in respect of which persons resident in it will, subject to any other terms of the Contract relating to Patient registration, be entitled to register with the

	Contractor or seek acceptance by the Contractor as a Temporary Resident; The Patient Registration Area is set out in Annex 1 of Schedule 2.
<b>Patient</b>	persons to whom the Contractor is required or has agreed to provide Services under the Contract;
<b>Patient Choice Extension Scheme</b>	means the scheme of that name established by the Secretary of State under which primary medical services may be provided to persons under arrangements made in accordance with directions by the Secretary of State under section 98A (exercise of functions) of the 2006 Act;
<b>Pharmaceutical Independent Prescriber</b>	means a person: <ul style="list-style-type: none"><li>(a) who is either engaged or employed by the Contractor or is party to the Contract;</li><li>(b) who is registered in Part 1 of the register maintained under Article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007 as amended or replaced from time to time or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976; and</li><li>(c) against whose name in that register is recorded an annotation signifying that he is qualified to order drugs,</li></ul>

medicines and Appliances as a  
pharmacist independent prescriber;

**Physiotherapist Independent Prescriber** a physiotherapist who is registered in Part 9 of the register maintained under article 5 of the Health and Social Work Professions Order 2001 and against whose name in that register is recorded an annotation signifying that the physiotherapist is qualified to order drugs, medicines and Appliances as a Physiotherapist Independent Prescriber;

**Physiotherapist** a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health and Social Work Professions Order 2001 relating to physiotherapists and—

- (i) employed or engaged by the Department for Work and Pensions, or
- (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.

**PMS Agreements Regulations** the National Health Service (Personal Medical Services Agreements) Regulations 2004;

**Practice Premises** an address or addresses specified in Part 1 of Schedule 2 of the Contract at which Services are to be provided under the



	Contract
<b>Practice</b>	the business operated by the Contractor for the purpose of delivering services under the Contract;
<b>Prescriber</b>	<p>a Chiropodist or Podiatrist Independent Prescriber;</p> <p>(a) an Independent Nurse Prescriber</p> <p>(b) a medical practitioner;</p> <p>(c) an optometrist independent prescriber;</p> <p>(d) a Pharmaceutical Independent Prescriber;</p> <p>(e) a Physiotherapist Independent Prescriber; and</p> <p>(f) a Supplementary Prescriber;</p> <p>who is either engaged or employed by the Contractor, or is a party to this Contract;</p>
<b>Prescription Form</b>	<p>except in the context of the expression “Electronic Prescription Form” or “Non-Electronic Prescription Form”:</p> <p>(a) a form for the purpose of ordering a drug, medicine or Appliance which is:</p> <p>(i) provided by the Commissioner, a local authority or the Secretary of</p>

State;

(ii) issued by a Prescriber; and

(iii) does not indicate that the drug, medicine or Appliance ordered may be ordered more than once; or

(b) where Clause 20.1 (Electronic Prescriptions) applies, data created in an electronic form for the purpose of ordering a drug, medicine or Appliance, which:

(i) is signed with a Prescriber's Advanced Electronic Signature;

(ii) is transmitted as an Electronic Communication to a nominated dispensing Contractor by the Electronic Prescription Service; and

(iii) (does not indicate that the drug, medicine or Appliance ordered may be provided more than once;

**Prescription Only Medicine**

a medicine referred to in regulation 5(3) (Classification of Medicinal Products) of the Human Medicines Regulations 2012;

**Primary Care List**

(a) a list of persons performing primary medical services, primary dental

services or primary ophthalmic services prepared in accordance with regulations made under sections 91, 106 or 123 respectively of the 2006 Act;

- (b) a list of persons undertaking to provide general medical services, general dental services, general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under the applicable provisions of the 2006 Act;
- (c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) prepared in accordance with regulations made under the 2006 Act,
- (d) a services list referred to in section 8ZA of the National Health Service (Primary Care) Act 1997 as amended or replaced from time to time;
- (e) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001 as amended or replaced from time to time; or

	(f) a list corresponding to any of the above lists in Scotland or Northern Ireland;
<b>Primary Carer</b>	in relation to an adult, the adult or organisation primarily caring for him;
<b>Registered Patient</b>	a person: <ul style="list-style-type: none"><li>(a) who is recorded by the Commissioner pursuant to the APMS Directions as being on the Contractor's List of Patients, or</li><li>(b) whom the Contractor has accepted for inclusion on its List of Patients, whether or not notification of that acceptance has been received by the Commissioner and who has not been notified by the Commissioner as having ceased to be on that list;</li></ul>
<b>Relevant Calls</b>	calls— <ul style="list-style-type: none"><li>(i) made by patients to the Practice Premises for any reason related to Services provided under this Contract; and</li><li>(ii) made by persons, other than patients, to the Practice Premises in relation to services provided as part of the health service;</li></ul>
<b>Relevant Register</b>	(a) in relation to a nurse, the Nursing and Midwifery Register;

- (b) in relation to a pharmacist, Part 1 of the register maintained under Article 10 of the Pharmacists and Pharmacy Technicians Order 2007 as amended or replaced from time to time or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976;
- (c) in relation to an optometrist, the register maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989; and
- (d) the part of the register maintained by the Health and Care Professions Council in pursuance of article 5 of the Health and Social Work Professions Order 2001 relating to:
  - (i) Chiropodists and Podiatrists;
  - (ii) Physiotherapists; or
  - (iii) Radiographers;

**Repeat Dispensing Services** pharmaceutical services or Local Pharmaceutical Services which involve the provisions of drugs, medicines or Appliances by a Chemist in accordance with a Repeatable Prescription;

**Repeatable Prescriber** a Prescriber who is:

- (a) engaged or employed by the Contractor where the Contractor provides Repeatable Prescribing Services under the terms of the Contract; or
- (b) a party to the Contract where such services are provided;

**Repeatable Prescribing Services**

services which involve the prescribing of drugs, medicines or appliances on a Repeatable Prescription;

**Repeatable Prescription**

except in the context of the expression Electronic Repeatable Prescription and Non-Electronic Repeatable Prescription, a Prescription which:

- (a) is a form provided by the Commissioner, a local authority or the Secretary of State for the purpose of ordering a drug, medicine or Appliance which is in the format required by NHS Business Services Authority and which:
  - (i) is issued by a Repeatable Prescriber to enable a Chemist or person providing Dispensing Services to receive payment for the provision of Repeat Dispensing Services;

- (ii) indicates that the drug, medicine or Appliance ordered may be provided more than once; and
  - (iii) specifies the number of occasions on which they may be provided; or
- (b) where Clause 20.1 (Electronic Prescriptions) applies, is data created in an electronic form for the purposes of ordering a drug, medicine or Appliance, which:
  - (i) is signed with the Prescriber's Advanced Electronic Signature;
  - (ii) is transmitted as an Electronic Communication to a nominated dispensing Contractor by the Electronic Prescription Service; and
  - (iii) indicates that the drugs, medicines or Appliances ordered may be provided more than once and specifies the number of occasions on which they may be provided;

**Restricted Availability  
Appliance**

an Appliance which is approved for particular categories of persons or particular purposes only;

<b>Scheduled Drug</b>	<p>(a) a drug, medicine or other substance specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under the Contract; or</p> <p>(b) except where the conditions in Clause 30.1 are satisfied, a drug, medicine or other substance which is specified in any directions given by the Secretary of State under section 88 of the 2006 Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes;</p>
<b>Secretary of State</b>	the Secretary of State for Health;
<b>Service Specification</b>	the specification for the Services set out in Schedule 2 of the Contract;
<b>Services</b>	the services to be provided by the Contractor in accordance with the terms of the Contract as detailed in the Service Specification;
<b>Standard Disclosure</b>	shall have the meaning set out in the Code of Practice on Disclosure;
<b>Standards for Better Health</b>	the document produced by the Department of Health establishing the core and



	developmental standards covering NHS healthcare provided for NHS patients in England;
<b>Summary Care Record</b>	means the system approved by the Commissioner for the automated uploading, storing and displaying of patient data relating to medications, allergies, adverse reactions and, where agreed with the Contractor and subject to the patient's consent, any other data taken from the patient's electronic record;
<b>Summary Information</b>	means items of patient data that comprise the Summary Care Record;
<b>Supplementary Prescriber</b>	<p>a person:</p> <ul style="list-style-type: none"><li>(a) who is either engaged or employed by the Contractor; or</li><li>(b) whose name is registered in:<ul style="list-style-type: none"><li>(i) the Nursing and Midwifery Register;</li><li>(ii) Part 1 of the Register maintained under Article 19 of the Pharmacy Order 2010;</li><li>(iii) the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976; or</li><li>(iv) the part of the register maintained by the Health</li></ul></li></ul>

Professions Council in  
pursuance of article 5 of the  
Health and Social Work  
Professions Order 2001  
relating to:

(aa) chiropodists and  
podiatrists;

(bb) physiotherapists;

(cc) radiographers:  
diagnostic or  
therapeutic; or

(v) the register of optometrists  
maintained by the General  
Optical Council pursuant to  
section 7 of the Opticians Act  
1989; and

(c) against whose name is recorded in  
the Relevant Register an annotation  
signifying that he is qualified to  
order drugs medicines and  
Appliances as a Supplementary  
Prescriber;

**System of Clinical  
Governance**

a framework through which the Contractor  
endeavours continuously to improve the  
quality of its Services and safeguard high  
standards of care by creating an  
environment in which clinical excellence  
can flourish.

**Temporary Resident**

has the meaning given in the GMS

Contracts Regulations;

**Transferring Employees**

the employees of the Commissioner or any Contractor of the services immediately prior to the Commencement Date which become the Services (as the case may be) whose employment shall transfer under TUPE to the Contractor on the Commencement Date and any other employees of the Commissioner or any such Contractor (as the case may be) to whom TUPE applies by operation of law as a consequence of this Contract;

**TUPE**

the Transfer of Undertakings (Protection of Employment) Regulations 2006

**Working Day**

any day apart from Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday; and

**Writing**

except in Clause 57.1 and unless the context otherwise requires, includes electronic mail and “written” should be construed accordingly.

## **Schedule 2**

### **Service Specification<sup>15</sup>**

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<sup>15</sup> The Service Specification must specify who the Contractor is to provide services to under the Contract, including where appropriate by reference to an area within which a person resident would be entitled to receive services under the Contract. This is a requirement of the APMS Directions.

## **Service Mobilisation / Transition Plan<sup>16</sup>**

The contractor shall ensure that those services and requirements described in this contract are implemented in accordance with the timetable and plan described below.

For the avoidance of doubt where any service or requirement is not specified in the Service Mobilisation / Transition Plan this shall be deemed to have been implemented by the contract commencement date.

This plan was [proposed by the contractor as part of their successful tender bid and forms part of this contract] [agreed between the Commissioner and Contractor as part of the negotiations]

*Insert Contractors Service Mobilisation / Transition Plan*

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<sup>16</sup> For local agreement

## **Annex 1**

### **Patient Registration Area and Outer Boundary Area**

**Reference: Clause 31.2**

**[FOR LOCAL AGREEMENT]**

**Schedule 3**  
**Practice Premises and Equipment**

**Part 1**  
**Premises**

[INSERT DETAILS HERE]

## **Part 2**

### **Provisions relating to Loaned Equipment**

<sup>17</sup>At the Commencement Date of this contract there **is/is no**<sup>18</sup> Loaned Equipment. Therefore the provisions in this Part 2 **do/do not** apply at Commencement

- 1.1 The Contractor shall be liable for and shall make good any damage to any Loaned Equipment caused by misdirection or misuse due to negligence on the part of the Contractor, his employees, contractors or agents or any other person or entity engaged by the Contractor and in the event that any such Loaned Equipment is beyond economic repair the Contractor shall at its own cost procure new replacements of equivalent specification or such other specification that the Commissioner may approve in writing.
- 1.2 The Commissioner shall not be liable for any damage to the Loaned Equipment caused by faulty operation or misuse of the Loaned Equipment.
- 1.3 The Commissioner shall have the right to withdraw any Loaned Equipment at any time and shall be under no liability whatsoever for failing to lend equipment at any time.
- 1.4 The Commissioner will grant to the Contractor on and from the Commencement Date, for the duration set out in paragraph 1.5, a non-exclusive, non-transferable licence to use any and all of the Loaned Equipment that may be required to enable the Contractor to carry out or otherwise perform the Services and any ancillary services. The Parties acknowledge and agree that the list of Loaned Equipment set out in Annex 1 to Schedule 3 has been compiled based on the information known to the Parties at the Commencement Date. The Parties acknowledge and agree that the list of Loaned Equipment set out in Part 2 of Schedule 3 may not be a complete list.
- 1.5 The licence granted pursuant to paragraph 1.4 shall terminate at the same time as this Contract. If this Contract is terminated (in whole or in part) for any

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<sup>17</sup> May be amended – for local agreement

<sup>18</sup> Delete within highlighted sections where applicable



reason in accordance with its terms, the licence shall terminate in respect of the Loaned Equipment and the Contractor shall at the Commissioner's request return the Loaned Equipment to the Commissioner in accordance with paragraph 1.12.

**1.6 The Contractor shall not:**

- 1.6.1 sub-license to any sub-contractor (other than those approved in writing by the Commissioner);
- 1.6.2 assign or novate the benefit or burden of the licence set out in paragraph 1.4 in whole or in part;
- 1.6.3 allow the Loaned Equipment to become the subject of any charge, lien or encumbrance; and
- 1.6.4 deal in any manner with any of the Loaned Equipment which is inconsistent with its rights and obligations under paragraph 1.4,

without the prior written consent of the Commissioner, which shall not be unreasonably withheld.

**1.7 The Contractor shall:**

- 1.7.1 use the Loaned Equipment in accordance with manufacturer's instructions and any instructions provided by the Commissioner to the Contractor;
- 1.7.2 store the Loaned Equipment appropriately and in accordance with all applicable Law, good practice guidelines and any manufacturer's instructions;
- 1.7.3 establish and manage a planned preventative maintenance programme and make adequate and appropriate contingency arrangements for emergency remedial maintenance or substitute equipment;
- 1.7.4 keep the Loaned Equipment in good condition and repair;

- 1.7.5 maintain records of maintenance testing and certification of the Loaned Equipment, such records to be made available to the Commissioner as requested from time to time;
  - 1.7.6 ensure the Loaned Equipment are only operated or used by properly trained and appropriately qualified operators (where applicable);
  - 1.7.7 adequately insure all the Loaned Equipment.
- 1.8 Upon receiving written notice from the Commissioner, the Contractor will allow the Commissioner to conduct an inspection of the Loaned Equipment in order to ensure the Contractor is complying with its obligations set out in this paragraph 1.
- 1.9 Save to the extent caused or contributed to by the Commissioner, the Contractor shall indemnify and keep indemnified the Commissioner from and against all liability in respect of all losses, claims, charges, demands, liabilities, damages and expenses suffered by the Commissioner in respect of:
- 1.9.1 damage, loss or destruction of the Loaned Equipment;
  - 1.9.2 injury, harm or death of any person;
  - 1.9.3 damage to any Premises; or
  - 1.9.4 failure by the Contractor to comply with its obligations under paragraph 1.7.
- by reason of acts or omissions by the Contractor or those authorised by it when using the Loaned Equipment after the Commencement Date.
- 1.10 Save as otherwise provided in this Clause, the Contractor shall use the Loaned Equipment at its own risk and no liability shall attach to the Commissioner in respect of the use of the Loaned Equipment by the Contractor or otherwise.
- 1.11 The Parties agree that the Licence granted pursuant to paragraph 1.4 may be terminated in respect only of the Loaned Equipment affected by the relevant

Licence Termination Event, by the Commissioner, immediately on notice to the Contractor, on the occurrence of any of the following events:

- 1.11.1 expiry or termination of any of this Contract, in whole or in part;
- 1.11.2 the Contractor failing to comply with its obligations under this paragraph 1;
- 1.11.3 there is a change in Law that requires the licensing arrangements to end; or
- 1.11.4 the Contractor ceasing to exist or ceasing to carry on its business or any part of its business,

(each a “Licence Termination Event”) and the provisions of paragraph 1.12 shall apply.

1.12 Upon the occurrence of a Licence Termination Event, the Contractor shall return to the Commissioner the Loaned Equipment as soon as reasonably practicable in the same or similar condition as the Loaned Equipment was handed over to the Contractor on the Transfer Date, excepting fair wear and tear (“Return Conditions”).

1.13 If the Contractor fails to return the Loaned Equipment to the Commissioner upon request, or any returned Loaned Equipment do not comply with the Return Conditions, then:

- 1.13.1 the Commissioner shall be entitled to deduct an amount equal to the replacement value of any and all Loaned Equipment that are either not returned, or returned in a condition that does not meet the Return Conditions (as applicable) at the date of the expiry or termination, from any amounts payable by the Commissioner to the Contractor under this Contract; or
- 1.13.2 the Contractor shall pay the Commissioner, on written notice from the Commissioner, an amount equal to the replacement value of the portion of the Loaned Equipment that were either not returned or

returned in a condition that does not comply with the Return Conditions (as applicable) at the time such assets are returned to the Commissioner.

## **Annex 1**

### **Loaned Equipment**

[List of Loaned Equipment, if any, to be inserted here]

## **Schedule 4**

### **Finance<sup>19</sup>**

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<sup>19</sup> For local agreement.

## Schedule 4 Part 2: Minimum Insurance Requirements

### Reference Clause 52

The minimum insurance required under clause 52 is set out below<sup>20</sup>.

Class	Minimum Sum Insured
Public Liability	£5,000,000 (five million pounds sterling) for any one claim and unlimited in the aggregate
Employers Liability	£10,000,000 (ten million pounds sterling) any one claim
Property All Risks	Reinstatement as new cost on buildings, fixtures, fittings and contents in relation to damage to property used for or in connection with the ownership, maintenance and operation of the Practice Premises and provision of the Services.
Clinical Negligence	£5,000,000 (five million pounds sterling) for any one claim with an aggregate limit of at least £10,000,000 (ten million pounds sterling).

<sup>20</sup> For local agreement. An assessment should be made in each set of circumstances as to the appropriate level of cover.

## **Schedule 5**

### **Complaints Procedure**

#### **1. Arrangements for the handling and consideration of complaints**

- (1) The Contractor must make arrangements (“arrangements for dealing with complaints”) in accordance with this Schedule for the handling and consideration of complaints.
- (2) The arrangements for dealing with complaints must be such as to ensure that—
  - (a) complaints are dealt with efficiently;
  - (b) complaints are properly investigated;
  - (c) complainants are treated with respect and courtesy;
  - (d) complainants receive, so far as is reasonably practical—
    - (i) assistance to enable them to understand the procedure in relation to complaints; or
    - (ii) advice on where they may obtain such assistance;
  - (e) complainants receive a timely and appropriate response;
  - (f) complainants are told the outcome of the investigation of their complaint; and
  - (g) action is taken if necessary in the light of the outcome of a complaint.

#### **2. Responsibility for complaints arrangements**

- (1) The Contractor must designate—
  - (a) a responsible person, to be responsible for ensuring compliance with the arrangements made under this Schedule, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint; and
  - (b) a complaints manager, to be responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under this Schedule.
- (2) The functions of the responsible person may be performed by any person authorised by the Contractor to act on behalf of the responsible person.



- (3) The functions of the complaints manager may be performed by any person authorised by the Contractor to act on behalf of the complaints manager.
- (4) The responsible person is to be:
  - (a) the person who acts as the chief executive officer of the Contractor or, if none—
    - (i) the person who is the sole proprietor of the Contractor;
    - (ii) where the Contractor is a partnership, a partner; or
    - (iii) in any other case, a director of the Contractor, or a person who is responsible for managing the Contractor.
- (5) The complaints manager may be—
  - (a) a person who is not an employee of the Contractor;
  - (b) the same person as the responsible person.

### **3. Persons who may make complaints**

- (1) A complaint may be made by—
  - (a) a person who receives or has received services from the Contractor; or
  - (b) a person who is affected, or likely to be affected, by the action, omission or decision of the Contractor which is the subject of the complaint.
- (2) A complaint may be made by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—
  - (a) has died;
  - (b) is a child;
  - (c) is unable to make the complaint themselves because of—
    - (i) physical incapacity; or
    - (ii) lack of capacity within the meaning of the Mental Capacity Act 2005; or
  - (d) has requested the representative to act on their behalf.
- (3) Where a representative makes a complaint on behalf of a child, the Contractor—

- (a) must not consider the complaint unless it is satisfied that there are reasonable grounds for the complaint being made by a representative instead of the child; and
  - (b) if it is not so satisfied, must notify the representative in writing, and state the reason for its decision.
- (4) This paragraph applies where—
  - (a) a representative makes a complaint on behalf of—
    - (i) a child; or
    - (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and
  - (b) the Contractor is satisfied that the representative is not conducting the complaint in the best interests of the person on whose behalf the complaint is made.
- (5) Where paragraph (4) applies—
  - (a) the complaint must not be considered or further considered under this Schedule; and
  - (b) the Contractor must notify the representative in writing, and state the reason for its decision.
- (6) In this Schedule any reference to a complainant includes a reference to a representative.

#### **4. Time limit for making a complaint**

- (1) Except as mentioned in paragraph (2), a complaint must be made not later than 12 months after—
  - (a) the date on which the matter which is the subject of the complaint occurred; or
  - (b) if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.
- (2) The time limit in paragraph (1) shall not apply if the Contractor is satisfied that—
  - (a) the complainant had good reasons for not making the complaint within that time limit; and

- (b) notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

## **5. Procedure before investigation**

- (1) A complaint may be made orally, in writing or electronically.
- (2) Where a complaint is made orally, the Contractor must—
  - (a) make a written record of the complaint; and
  - (b) provide a copy of the written record to the complainant.
- (3) The Contractor must acknowledge the complaint not later than 3 working days after the day on which it receives the complaint.
- (4) Where the Contractor receives a complaint sent to it by the Commissioner or another responsible body (as defined in the Complaints Regulations), the complaint must be acknowledged by the Contractor not later than 3 working days after the day on which it receives the complaint.
- (5) The acknowledgement may be made orally or in writing.
- (6) At the time it acknowledges the complaint, the Contractor must offer to discuss with the complainant, at a time to be agreed with the complainant—
  - (a) the manner in which the complaint is to be handled; and
  - (b) the period (“the response period”) within which—
    - (i) the investigation of the complaint is likely to be completed; and
    - (ii) the response is likely to be sent to the complainant.
- (7) If the complainant does not accept the offer of a discussion, the Contractor must—
  - (a) determine the response period specified in paragraph (6)(b); and
  - (b) notify the complainant in writing of that period.

## **6. Investigation and response**

- (1) A Contractor to which a complaint is made must—
  - (a) investigate the complaint in a manner appropriate to resolve it speedily and efficiently; and
  - (b) during the investigation, keep the complainant informed, as far as reasonably practicable, as to the progress of the investigation.

- (2) As soon as reasonably practicable after completing the investigation, the Contractor must send the complainant in writing a response, signed by the Contractor, which includes—
  - (a) a report which includes the following matters—
    - (i) an explanation of how the complaint has been considered; and
    - (ii) the conclusions reached in relation to the complaint, including any matters for which the complaint specifies, or the Contractor considers, that remedial action is needed; and
  - (b) confirmation as to whether the Contractor is satisfied that any action needed in consequence of the complaint has been taken or is proposed to be taken;
  - (c) details of the complainant's right to take their complaint to the Health Service Commissioner under the Health Service Commissioners Act 1993.
- (3) In paragraph (4), “relevant period” means the period of 6 months commencing on the day on which the complaint was received, or such longer period as may be agreed before the expiry of that period by the complainant and the Contractor.
- (4) If the Contractor does not send the complainant a response in accordance with paragraph (2) within the relevant period, the Contractor must—
  - (a) notify the complainant in writing accordingly and explain the reason why; and
  - (b) send the complainant in writing a response in accordance with paragraph (2) as soon as reasonably practicable after the relevant period.

## **7. Form of communications**

- (1) Any communication which is required by this Schedule to be made to a complainant may be sent to the complainant electronically where the complainant—
  - (a) has consented in writing or electronically; and
  - (b) has not withdrawn such consent in writing or electronically.

- (2) Any requirement in this Schedule for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with this Schedule, by the individual who is authorised to sign the document typing their name or producing their name using a computer or other electronic means.

## **8. Publicity**

The Contractor must make information available to the public as to—

- (a) its arrangements for dealing with complaints; and
- (b) how further information about those arrangements may be obtained.

## **9. Monitoring**

For the purpose of monitoring the arrangements under this Schedule the Contractor must maintain a record of the following matters—

- (a) each complaint received;
- (b) the subject matter and outcome of each complaint; and
- (c) where the Contractor informed the complainant of—
  - (i) the response period specified in paragraph 5(6)(b); or
  - (ii) any amendment to that period,

whether a report of the outcome of the investigation was sent to the complainant within that period or any amended period.

## **10. Annual reports**

- (1) The Contractor must prepare an annual report for each year which must—
  - (a) specify the number of complaints which the Contractor received;
  - (b) specify the number of complaints which the Contractor decided were well-founded;
  - (c) specify the number of complaints which the Contractor has been informed have been referred to—
    - (i) the Health Service Commissioner to consider under the Health Service Commissioners Act 1993; and
  - (d) summarise—
    - (i) the subject matter of complaints that the Contractor received;

- (ii) any matters of general importance arising out of those complaints, or the way in which the complaints were handled;
  - (iii) any matters where action has been or is to be taken to improve services as a consequence of those complaints.
- (2) In paragraph (1), “year” means a period of 12 months ending with 31st March.
- (3) The Contractor must ensure that its annual report is available to any person on request.
- (4) The Contractor must send a copy of its annual report to the Commissioner.
- (5) The copy of the annual report required to be sent in accordance with paragraph (5) must be sent as soon as reasonably practicable after the end of the year to which the report relates.

## **Schedule 6**

### **Performance Management<sup>21</sup>**

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<sup>21</sup> For local agreement.

## **Annex 1**

### **Annual Report**

The Contractor agrees to provide a report on an annual basis as requested by the Commissioner. The Template for the Annual Report shall be provided by the Commissioner no later than 9 months after the Commencement Date.<sup>22</sup>

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<sup>22</sup> Or for local agreement if provisions can be specified or agreed by alternative means.



## **Schedule 7**

### **Administration**

The following person is the Commissioner's Representative and is authorised to act on behalf of the Commissioner on all matters relating to the Contract:

Name:

Title:

The Contractor's Representative shall be:

Name:

Title:

All correspondence relating to the Contract shall be dated and sent to the Commissioner's Representative or the Contractor's Representative at the postal or email addresses notified to the other party from time to time.

The Commissioner and the Contractor shall appoint Representatives from time to time who are authorised to act on behalf of the Commissioner and Contractor on all matters relating to the Contract.

The Commissioner and Contractor shall notify the other party of the identity of their respective Representative(s) and of any change of such Representative(s) as soon as reasonably practicable.

For the purposes of clause 81.2 (Confidential Information), the relevant timescale shall be [2 years for all classes of information]<sup>23</sup>.

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<sup>23</sup> Consideration should be paid in each case as to the nature of information likely to be affected.

## **Schedule 8**

### **Particulars for Practice Leaflet**

**[INCLUDE IF RELEVANT:]**

A practice leaflet shall include:

1. In the case of a Contract with a partnership:
  - a. the name of the Contractor;
  - b. in the case of a Contract with a partnership, whether or not it is a limited partnership; and
  - c. the names of all the partners and, in the case of a limited partnership, their status as a general or limited partner.
2. In the case of a Contract with a company:
  - a. the names of the directors, the company secretary and the shareholders of that company; and
  - b. the address of the company's registered office.
3. The full name of each person performing Services under the Contract.
4. In the case of each Health Care Professional performing services under the Contract his professional qualifications.
5. Whether the Contractor undertakes the teaching or training of Health Care Professionals or persons intending to become health care professionals.
6. The Contractor's Patient Registration Area, including the area known as the Outer Boundary Area, by reference to a sketch diagram, plan or postcode.
7. The address of each of the Practice Premises.
8. The Contractor's telephone and fax number and the address of its website (if any).

9. Whether the Practice Premises have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such Patients.
10. How to register as a Patient.
11. The right of Patients to express a preference of practitioner and the means of expressing such a preference.
12. The services available under the Contract.
13. The opening hours of the Practice Premises and the method of obtaining access to services throughout the Core Hours.
  - (i) The criteria for home visits and the method of obtaining such a visit.
  - (ii) The consultations available to Patients.
14. The arrangements for services in the Out of Hours period (whether or not provided by the Contractor) and how the Patient may access such services.
15. Where the services referred to in paragraph 14 are not provided by the Contractor, the fact that the Commissioner is responsible for commissioning the services.
16. The method by which Patients are to obtain repeat prescriptions.
17. If the Provider offers Repeatable Prescribing Services, the arrangements for providing such services.
18. If the Provider is a dispensing Provider the arrangements for dispensing prescriptions.
19. How Patients may make a complaint or comment on the provision of service.
20. The rights and responsibilities of the Patient, including keeping appointments.
21. The action that may be taken where a Patient is violent or abusive to the Provider or his staff or other persons on the Practice Premises.

22. Details of who has access to Patient information (including information from which the identity of the individual can be ascertained) and the Patient's rights in relation to disclosure of such information.
23. The name, address and telephone number of the Commissioner.
24. Information about the assignment by the Contractor to its new and existing Patients of an Accountable GP in accordance with clauses 31.133 to 31.141.
25. Information about the assignment by the Contractor to its Patients aged 75 and over of an Accountable GP under clauses 31.121 to 31.124.

**Schedule 9**  
**TUPE, Tendering and Handover<sup>24</sup>**

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<sup>24</sup> For local agreement.

## **Schedule 10**

### **Dispute Resolution Procedure**

#### **Escalated Negotiation**

1. If any Dispute arises, the Parties must first attempt to settle it by either of them making a written offer to the other to negotiate. During the Negotiation Period the Parties must negotiate and be represented:
  - 1.1. for the first 10 Operational Days, by a senior person who where practicable has not had any direct day-to-day involvement in the matter and has authority to settle the Dispute; and
  - 1.2. for the last 5 Operational Days, by their chief executive, director, or member of their Governing Body, as the case may be, who has authority to settle the Dispute.
2. Where practicable, neither Party shall be represented by the same individual under it paragraphs 1.1 and 1.2.

#### **Mediation**

3. If the Parties are unable to settle the Dispute by negotiation, they must, within 5 Operational Days after the end of the Negotiation Period, submit the Dispute:
  - 3.1. to mediation arranged jointly by the NHSTDA and the Commissioner where the Contractor is an NHS Trust; or
  - 3.2. to mediation by CEDR or other independent body or organisation agreed between the Parties in all other cases.
4. In the case of a mediation under paragraph 3.1:
  - 4.1. during the mediation phase and before the mediation session, each Party must submit to the mediator within 5 Operational Days of the mediator's request a signed position statement describing the

precise points on which the Parties disagree, and describing its solution to the Dispute;

- 4.2. where the mediator is satisfied that the nature of the Dispute has been adequately documented in accordance with General Condition 4.1, the mediator will allow each Party 5 Operational Days in which to comment to him in writing on the other Party's solution to the Dispute;
- 4.3. the mediator may, in their absolute discretion, require either Party to clarify any aspects of its signed position statement and upon receipt of that clarification, will forward the clarification to the other Party;
- 4.4. following distribution by the mediator of the signed position statements and any clarification to the Parties, the mediator will arrange a mediation session at a venue chosen by the mediator to facilitate mediation and settlement of the Dispute. The mediation session will be fixed for a date at least 10 Operational Days following receipt by both Parties of the other Party's signed position statement and any clarification;
- 4.5. each Party must make an opening presentation of its position to the other party and the mediator will then meet each of the Parties separately for such time as the mediator considers appropriate and will determine the procedure of the mediation session. Neither Party will terminate its participation in the mediation session until after the opening presentations have been given and the mediator has met both Parties separately;
- 4.6. the Parties must keep confidential and not disclose or use for any other purpose any information, whether given orally, in writing or otherwise, arising out of or in connection with the mediation, including the fact of any settlement and its terms, except for the fact that the mediation is to take place or has taken place; and

- 4.7. all information, whether oral, in writing or otherwise, arising out of or in connection with the mediation will be inadmissible in any current or subsequent litigation or other proceedings. This paragraph 4.7 will not apply to any information which would in any event have been admissible in any such proceedings.
- 4.8. Mediations under paragraph 3.2 must follow the mediation process of CEDR or other independent body or organisation as agreed between the Parties in accordance with clause 3.2.

### **Expert Determination**

- 4.9. If the Parties are unable to settle the Dispute through mediation, the Dispute must be referred to expert determination, by one Party giving written notice to that effect to the other Party following closure of the failed mediation. The Expert Determination Notice must include a brief statement of the issue or issues which it is desired to refer, the expertise required in the expert, and the solution sought.
- 4.10. If the Parties have agreed upon the identity of an expert and the expert has confirmed in writing their readiness and willingness to embark upon the expert determination, then that person will be appointed as the Expert.
- 4.11. Where the Parties have not agreed upon an expert, or where that person has not confirmed their willingness to act, then either Party may apply to CEDR for the appointment of an expert. The request must be in writing, accompanied by a copy of the Expert Determination Notice and the appropriate fee and must be copied simultaneously to the other Party. The other Party may make representations to CEDR regarding the expertise required in the expert. The person nominated by CEDR will be appointed as the Expert.
- 4.12. The Party serving the Expert Determination Notice must send to the Expert and to the other Party within 5 Operational Days of the



appointment of the Expert a statement of its case, including a copy of the Expert Determination Notice, the Contract, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the solution sought, and the evidence upon which it relies. The statement of case must be confined to the issues raised in the Expert Determination Notice.

- 4.13. The Party not serving the Expert Determination Notice must reply to the Expert and to the other Party within 5 Operational Days of receiving the statement of case, giving details of what is agreed and what is disputed in the statement of case and the reasons why.
- 4.14. The Expert must produce a written decision with reasons within 30 Operational Days of receipt of the statement of case referred to in paragraph 4.13, or any longer period as is agreed by the Party after the Dispute has been referred.
- 4.15. The Expert will have complete discretion as to how to conduct the expert determination, and will establish the procedure and timetable.
- 4.16. The Party must comply with any request or direction of the Expert in relation to the expert determination.
- 4.17. The Expert must decide the matters set out in the Expert Determination Notice, together with any other matters which the Parties and the Expert agree are within the scope of the expert determination. The Expert must send their decision in writing simultaneously to both Parties. Within 5 Operational Days following the date of the decision the Parties must provide the Expert and the other Party with any requests to correct minor clerical errors or ambiguities in the decision. The Expert must correct any minor clerical errors or ambiguities at their discretion within a further 5 Operational Days and send any revised decision simultaneously to the Parties in Dispute.

- 4.18. The Parties must bear their own costs and expenses incurred in the expert determination and are jointly liable for the costs of the Expert.
- 4.19. **The decision of the Expert is final and binding**, except in the case of fraud, collusion, bias, or material breach of instructions on the part of the Expert, in which case a Party will be permitted to apply to Court for an Order that:
- 4.19.1. the Expert reconsider his decision (either all of it or part of it); or
- 4.19.2. the Expert's decision be set aside (either all of it or part of it).
- 4.20. If a Party in Dispute does not abide by the Expert's decision the other Parties may apply to Court to enforce it.
- 4.21. All information, whether oral, in writing or otherwise, arising out of or in connection with the expert determination will be inadmissible as evidence in any current or subsequent litigation or other proceedings whatsoever, with the exception of any information which would in any event have been admissible or disclosable in any such proceedings.
- 4.22. The Expert is not liable for anything done or omitted in the discharge or purported discharge of their functions, except in the case of fraud or bad faith, collusion, bias, or material breach of instructions on the part of the Expert.
- 4.23. The Expert is appointed to determine the Dispute or Disputes between the Parties and the Expert's decision may not be relied upon by third parties, to whom the Expert shall have no duty of care.