



# **NHS England Standard Personal Medical Services Agreement 2015/16**

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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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**THIS AGREEMENT** is made on the [insert date] day of [insert month and year]

**BETWEEN**

- (1) The Board; and
- (2) [ insert practice name ] [of [ \*\* ]] [LIMITED (company number [ \*\* ])  
whose registered office is at [ \*\* ]] (the “**Contractor**”).<sup>1</sup>

**BACKGROUND**

- A The Board is a statutory body established pursuant to section 1H of the National Health Service Act 2006. It is the duty of the Board 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 Board 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 Board is now entering into this Agreement 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 Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

“**the 2006 Act**” means the National Health Service Act 2006;

“**Accountable GP**” means a general medical practitioner assigned to a Registered Patient in accordance with paragraphs 4 or 30 of Schedule 5;

“**Additional Services**” has the meaning given in the GMS Contracts Regulations and means one or more of;

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<sup>1</sup> insert where marked \*\* only if practice has Limited Company status.

- (a) Cervical Screening Services;
- (b) Contraceptive Services;
- (c) vaccines and immunisations;
- (d) Childhood Vaccines and Immunisations;
- (e) Child Health Surveillance Services;
- (f) Maternity Medical Services; and
- (g) Minor Surgery;

**“Adjudicator”** means the Secretary of State or a person or persons appointed by the Secretary of State under section 9 of the 2006 Act or where applicable paragraph 95 of Schedule 5 of the PMS Regulations;

**“Advanced Electronic Signature”** means an electronic signature which is:

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using means that the signatory can maintain under his sole control; and
- (d) linked to the data to which it relates in such a manner that any subsequent change of data is detectable;

**“Affected Party”** means, in the context of clause 82, the party to this Agreement whose performance of obligations under this Agreement have been affected by the Force Majeure Event;

**“Agreement Sanction”** shall have the meaning stated in clause 66.1;

**“Annual Contract Value”** means the amount payable by the Board for the Services in any given Contract Year as such amount is adjusted in accordance with the provisions of this Agreement, and which is for the first Contract Year the pro rated amount stated in Schedule 2 the amount stated in Schedule 2 such sum being the annualised amount

which would have been payable had the Agreement commenced on 1st April and been in force for the full Contract Year;

**“Appliance”** means an Appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 126 the 2006 Act;

**“Approved Medical Practice”** shall be construed in accordance with the Medical Act 1983;

**“Armed Forces GP”** means a medical practitioner, who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the Armed Forces of the Crown;

**“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”** means the panel appointed by the Board under paragraph 25 of Schedule 5 of this Agreement;

**“Authorised NHS Parties”** means any NHS body which is authorised by the Board in accordance with this Agreement and notified to the Contractor;

**“Bank Holiday”** means any day that is specified or proclaimed as a bank holiday in England pursuant to section 1 of the Banking and Financial Dealings Act 1971;

**“Batch Issue”** means a form, in the format required by the Board and approved by the Secretary of State which:

- (a) is issued by a repeatable Prescriber at the same time as a Non-Electronic Repeatable Prescription to enable a Chemist or person providing dispensing services to receive payment for the provision of Repeat Dispensing Services;
- (b) relates to a particular Non-Electronic Repeatable Prescription and contains the same date as that prescription;

- (c) is generated by a computer and not signed by a repeatable Prescriber;
- (d) is issued as one of a sequence of forms, the number of which is equal to the number of occasions on which the drugs, medicines or Appliances ordered on the Non-Electronic Repeatable Prescription may be provided; and
- (e) has included on it a number denoting its place in the sequence referred to in paragraph (d) above;

**“the Board”** means the National Health Service Commissioning Board and “NHS England” shall be construed accordingly;

**“Board Representative”** means the person appointed by the Board from time to time in accordance with the provisions of this Agreement as the main point of contact for the Contractor;

**“Breach Notice”** means a notice on the Contractor requiring the Contractor not to repeat the breach of this Agreement;

**“Business Day”** means any day except Saturday, Sunday, Good Friday, Christmas Day and any Bank Holiday;

**“CCG”** means a Clinical Commissioning Group;

**“CCT”** means Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983;

**“Cabinet Office Statement”** means the Cabinet Office Statement on Staff Transfers in the Public Sector 2000 (January 2000 as revised in November 2007 and as may be further amended from time to time) and Fair Deal;

**“Caldicott Guardian”** means the person(s) appointed by the Contractor from time to time to act as Caldicott Guardian (as such a term is understood in the NHS from time to time);

**“Caldicott Guardian Manual 2010”** means the document or information known from time to time as such, and any successor document or information;

**“Care Quality Commission Standards”** means the standards which the Care Quality Commission or any successor body to it enforces or develops and which are applicable to the Contractor;

**“Cervical Screening Services”** means the services described in paragraphs 1.5 to 1.7 of Part 2 of Schedule 1

**“Change in Law”** means the coming into effect or repeal (without re-enactment or consolidation) in England and Wales of any law, or any judgment of a relevant court of law which changes binding precedent in England and Wales in each case after the date of this Agreement;

**“Charity Commissioners”** means the Charity Commissioners for England and Wales appointed under the relevant legislation, or such other persons or organisation as succeeds or replaces them from time to time;

**“Charity Trustee”** means one of the persons having the general control and management of the administration of a charity;

**“Chemist”** 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
- (c) a supplier of Appliances;

who is included in the list of the Board under Part 7 of the 2006 Act, or who provides Local Pharmaceutical Services in accordance with LPS arrangements;

**“Child”** means a person under the age of 16 years;

**“Child Health Surveillance Services”** means the services described in paragraphs 1.17 to 1.19 of Part 2 of Schedule 1

**“Childhood Vaccines and Immunisations”** means the services described in paragraphs 1.14 to 1.16 of Part 2 Schedule 1

**“Chiropodist or Podiatrist Independent Prescriber”** means 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;

**“Clinical Report”** means a report prepared by or on behalf of the Contractor in relation to a consultation with or any treatment of a Patient;

**“Closed”**, in relation to the Contractor's List of Patients, means closed to applications for inclusion in the List of Patients other than from immediate family members of Registered Patients;

**“Commencement Date”** means [INSERT DATE HERE]<sup>2</sup>;

**“Complaint”** means any information received by the Board or the Contractor from any source relating to the provision of the Services or the conduct or competence of an person employed or engaged or connected with the delivery or performance of the services;

**“Complaints Regulations”** means the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009;

**“Confidentiality Code of Practice for NHS Staff”** means the code of practice bearing this or a similar name which applies to NHS staff from time to time, or any similar or equivalent code of practice which succeeds it;

**“Confidentiality Directions”** means the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Provider Medical Services Directions 2013;

**“Confidential Information”** means all information in any form or medium which is not publicly available (either in its entirety or in the

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<sup>2</sup> This date to be inserted here will depend on the circumstances of use. This should be determined between the parties and their advisors

precise configuration or assembly of its components), together with any copies of that information in any form or medium or any part or parts of that information including accounts, business plans, strategies and financial forecasts, tax records, correspondence, designs, drawings, manuals, specifications, customer, sales or supplier information, technical or commercial expertise, software, formulae, processes, methods, knowledge, know-how and trade secrets);

**“Contraceptive Services”** means the services described in paragraph 1.8 of Part 2 of Schedule 1

**“Contract Month”** means a calendar month provided that the first Contract Month shall be deemed to be the period commencing on the date of this Agreement and ending on the last day of the calendar month in which the date of this Agreement falls and the last Contract Month shall be deemed to be the period commencing on the first day of the calendar month in which this Agreement terminates or expires and ending on the date on which this Agreement terminates or expires;

**“Contract Year”** means the period of twelve (12) Contract Months commencing on the 1st April in any year;

**“Control”** shall have the meaning specified in section 416 of the Income and Corporation Taxes Act 1988;

**“Contractor”** means a person or persons other than the Board who is a party, or are parties, to this Agreement;

**“Contractor Board Directors”** means the individuals designated as such by the Contractor in accordance with Schedule 9 of this Agreement (as may be amended from time to time by the Contractor);

**“Contractor Contract Managers”** means the individuals designated as such by the Contractor in accordance with Schedule 9 of this Agreement (as may be amended from time to time by the Contractor);

**“Contractor’s List of Patients”** means the list prepared and maintained by the Board under paragraph 3 of Schedule 5 of this Agreement and

references to the Contractor having a List of Patients shall be interpreted accordingly;

**“Contractor’s Practice Area”** means the area specified in this Agreement as the area in which Essential Services are to be provided;

**“Contractor’s Premises”** means an address specified in Schedule 7 of this Agreement as one at which services are to be provided under this Agreement and shall be interpreted synonymously with the expression “Practice Premises”;

**“Contractor Representative”** means the person appointed by the Contractor from time to time in accordance with the provisions of this Agreement as the main point of contact for the Board and the Board Representative;

**“Contractor Staff”** means any and all individuals who are employed or engaged by the Contractor or any other employer (including, without limitation, the Transferring Employees) at any time after the Commencement Date and who at any time after such date are concerned with all or any of the Services provided under the Agreement;

**“Core Hours”** means the period beginning at 8.00am and ending at 6.30pm on any day except Saturday, Sunday, Good Friday, Christmas Day or Bank Holidays;

**“Data Protection Legislation”** means the Data Protection Act 1998 together with all applicable regulations, directives, orders, codes of practice, guidance notes, instructions and formal written advice issued by or on behalf of the Information Commissioner from time to time;

**“Default Interest Rate”** means the rate of interest prescribed by the Late Payment of Commercial Debts (Interest) Act 1998;

**“Dispenser”** means a Chemist, medical practitioner or Contractor whom a Patient wishes to dispense his Electronic Prescriptions;

**“Dispensing Services”** means 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;

**“Drug Tariff”** means 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;

**“Electronic Communication”** has the same meaning as in section 15 of the Electronic Communications Act 2000;

**“Electronic Prescription”** means an Electronic Prescription Form or an Electronic Repeatable Prescription;

**“Electronic Prescription Form”** means a Prescription Form which falls within paragraph (b) of the definition of “Prescription Form”;

**“Electronic Prescription Service”** means the service of that name which is operated by the Health and Social Care Information Centre;

**“Electronic Repeatable Prescription”** means a Prescription Form which falls within paragraph (a)(ii) of the definition of “Repeatable Prescription”;

**“Eligible Employee”** means each Transferring Employee who immediately before the Commencement Date was a member of or was entitled to become a member of or but for the staff transfer to the Contractor or Sub-Contractor would have been entitled to become a member of the NHS Scheme;

**“Employing Authority”** means an employing authority as defined in the NHS Scheme Regulations;

**Employment Liabilities** means any costs, claims, demands, fines, or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including

those incurred by or attributed to any sub-Contractor of the Contractor (which shall include any incurred as a result of an indemnity or warranty given, or to be given by the Contractor to a sub-Contractor);

**“Employee Liability Information”** means the information set out in regulation 11 of TUPE;

**“Enhanced Services”** means

(a) services other than Essential Services, Additional Services or Out of Hours Services, or

(b) Essential services, Additional services or Out of Hours Services or an element of such a service that a Contractor agrees under the Agreement to provide in accordance with specifications set out in a plan, which requires of the Contractor an enhanced level of service provision compared to that which it needs generally to provide in relation to that service or element of service;

and which are specified in Part 3 of Schedule 1.

**“Equipment”** means any thing save for the Premises and the Contractor’s Staff;

**“Essential Services”** means the services described in regulation 15(3), (5), (6) and (8) of the General Medical Services Contracts Regulations, or services that are equivalent to those services, and which are to be provided by the Contractor during Core Hours;

**“Exit Plan”** means the plan set out in Schedule 10 as amended from time to time;

**“Fair Deal”** means the Cabinet Office Statement entitled “A Fair Deal for Pensions: staff transfer from central government” (October 2013 and as may be further amended from time to time) and, where applicable, any related guidance notes issued by HM Treasury (as amended from time to time);

**“Force Majeure Event”** means any circumstances beyond the reasonable control of the Contractor or the Contractor’s Staff including

without limitation war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination (unless caused by the performance of the Services), pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed, the actions of governmental authorities, strikes, lock-outs or other industrial action, whether of the party in question's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services, illness or absence of staff, adverse weather conditions, explosion, fire, flood or acts of terrorism;

**“General Medical Practitioner”** means, except where the context otherwise requires, a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council; upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

**“General Medical Services Contracts Regulations”** means the National Health Services (General Medical Services Contracts) Regulations 2004 as amended from time to time;

**“Good Practice”** means 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 Agreement whilst at the same time complying with any specific standards set out in this Agreement or notified to the Contractor by the Board from time to time;

**“GP Registrar”** means 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;

**“Group”** means in relation to any company that company and every other company which is from time to time a subsidiary or holding company of that company or a subsidiary of any such holding company (and the terms **“subsidiary”** and **“holding company”** shall have the meanings given to them by section 1159 of the Companies Act 2006 as amended or re-enacted from time to time);

**“Health and Social Services Board”** means a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972;

**“Health and Social Services Trust”** means a Health and Social Services Trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991;

**“Health Board”** means a Health Board established under the National Health Service (Scotland) Act 1978;

**“Health Care Professional”** has the same meaning as in section 93 of the 2006 Act;

**“Health Service Body”**, unless the context otherwise requires, has the meaning given to it in section 9 of the 2006 Act;

**“Health Service Commissioner”** means the Health Service Commissioner for England referred to in section 1 of the Health Service Commissioners Act 1993;

**“Home Oxygen Order Form”** means a form provided by the Board 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”** means 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;

**“Immediate Family Member”** means:

- (a) a spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with the Registered Patient has the characteristics of the relationship between husband and wife;
- (c) a Parent or step Parent;
- (d) a son;
- (e) a daughter;
- (f) a Child of whom the Registered Patient is:
  - (i) the guardian; or
  - (ii) the carer duly authorised by a local authority to whose care the Child has been committed under the Children Act 1989; or
- (g) a grandparent;

**“Independent Advocacy Service”** means services provided pursuant to section 223A of the Local Government and Public Involvement in Health Act 2007;

**“Independent Nurse Prescriber”** means a person:

- (a) who is either engaged or employed by the Contractor; and
- (b) who is registered in the Nursing and Midwifery Register; and
- (c) against whose name in that register is recorded an annotation signifying that he is qualified to order drugs, medicines and Appliances as a community practitioner nurse Prescriber, a nurse independent Prescriber or as a nurse independent/Supplementary Prescriber;

**“Intellectual Property Rights”** means any registered or unregistered patent, copyright, database right, moral right, design right, registered design, trade mark, service mark (whether registered or not), domain name, knowhow, utility model, unregistered design and all similar property rights including those subsisting in any part of the world in inventions, designs, drawings, performances, computer programs, confidential information, business names, goodwill and the style of presentation of goods or services and, where relevant, any application for any such right, or other industrial or intellectual property right subsisting anywhere in the world;

**“Investigation”** means any investigation or enquiry;

**“Law”** means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972;
- (c) any applicable guidance, direction or determination with which the Board and/or any of its Associates and/or 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 Board and/or the Department of Health;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;

in each case in force in England and Wales or in England;

**“Licensing Body”** means a body that licenses or regulates a particular profession;

**“Listed Medicines”** means the drugs mentioned in regulation 13(1) of the National Health Service (Charges for Drugs and Appliances) Regulations 2015;

**"Listed Medicines Voucher"** means a form provided by the Board for use for the purpose of ordering a Listed Medicine;

**"Local Medical Committee"** means a committee recognised by the Board under section 97 of the 2006 Act;

**"Major Incident"** means any occurrence which represents a serious threat to the health of the community or causes, or is likely to cause such numbers or types of casualties as to require special arrangements to be implemented and is of such a scale so as to prevent or restrict the Contractor from performing its obligations under this Agreement;

**"Maternity Medical Services"** means the services described in paragraphs 1.20 to 1.21 of Part 2 of Schedule 1;

**"Medical Card"** means a card issued by the Board, Local Health Board, Health Authority, Health Board or Health and Social Services Board to a person for the purpose of enabling him to obtain, or establishing his title to receive, Primary Medical Services;

**"Medical Performers List"** means the list of medical practitioners maintained and published by the Board in accordance with section 91 (persons performing Primary Medical Services) of the 2006 Act;

**"Medical Register"** means the registers kept under section 2 of the Medical Act 1983;

**"Minor Surgery"** means the services described in paragraphs 1.22 to 1.23 of Part 2 of Schedule 1;

**"National Disqualification"** means:

- (a) a decision made by the First-tier Tribunal under section 159 of the 2006 Act;
- (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 (Scotland) Tribunal which was 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;

**“National Institute for Health and Care Excellence”** means the body known at the date of this Agreement as the National Institute for Health and Care Excellence , and any successor body;

**“New Contractor”** means any third party engaged by the Board to supply any Services which are the same as or substantially similar to any or all of the Services and which are purchased by or provided to the Board following the termination or expiry of all or a part of this Agreement to replace Services formerly provided by the Contractor under this Agreement;

**“NHS Body”** shall have the meaning given to such term in clause 52.3.1;

**“NHS Contract”** has the meaning assigned to it in sections 9-11 of the 2006 Act;

**“NHS Dispute Resolution Procedure”** means the procedure for resolution of disputes specified:

- (a) in Schedule 6 of this Agreement; or
- (b) in a case to which paragraph 22 of Schedule 6 to this Agreement applies, in that paragraph;

**“NHS Pensions”** means NHS Pensions, as part of the NHS Business Services Authority;

**“NHS Scheme Regulations”** means The National Health Service Pension Scheme Regulations 1995 SI 1995/300 (as amended) and 2008 SI 2008/653 (as amended);

**“NHS Scheme”** means the NHS Pension Scheme for England and Wales (as amended from time to time);

**“NHS Tribunal”** means the Tribunal constituted under section 46 of the 1977 Act 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;

**“Nominated Dispenser”** means a Chemist, medical practitioner or Contractor whom a Patient has nominated 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;

**“Non-Electronic Prescription Form”** means a Prescription Form which falls within paragraph (a) of the definition of "Prescription Form";

**“Non-Electronic Repeatable Prescription”** means a form for the purpose of ordering a drug, medicine or Appliance which is:

- (a) provided by the Board, a local authority or the Secretary of State;
- (b) issued by the Prescriber;
- (c) indicates that the drug, medicine or Appliance ordered may be provided more than once; and
- (d) specifies the number of occasions on which they may be provided;

**“Normal Hours”** means those days and hours on which and the times at which Services under this Agreement are normally made available and may be different for different Services;

**“Nursing and Midwifery Register”** means the register maintained by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001;

**“Open”**, in relation to a Contractor's List of Patients, means open to applications from Patients in accordance with paragraph 5 of Schedule 5 to this Agreement;

**“Optometrist Independent Prescriber”** means a person:

- (a) who is registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989; and
- (b) against whose name is recorded in that register an annotation signifying that the person is qualified to order drugs, medicines and Appliances as an optometrist independent Prescriber;

**“Out of Hours Period”** means:

- (a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8.00am on the following day;
- (b) the period between 6.30pm on Friday and 8.00am on the following Monday; and
- (c) Good Friday, Christmas Day and Bank Holidays;

**“Out of Hours Services”** means services required to be provided in all or part of the Out of Hours Period which would be Essential Services if provided to the Contractor’s Registered Patients in Core Hours;

**“Patient Record”** means the medical records relating to a Patient;

**“Parent”** 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;

**“Patient”** means persons to whom the Contractor is required or has agreed to provide services under this Agreement subject to the provisions of Schedule 5;

**“Patient Choice Extension Scheme”** means the scheme of that name established by the Secretary of State under which Primary Medical Services may be provided under arrangements made in accordance with directions given to the Board by the Secretary of State under section 98A (exercise of functions) of the 2006 Act;

**“Personal Data”** shall have the meaning assigned to it in the Data Protection Act 1998;

**“Pharmacist Independent Prescriber”** means a person:

- (a) who is either engaged or employed by the Contractor or is party to this Agreement;
- (b) who is registered in Part 1 of the register maintained under article 19 of the Pharmacy Order 2010 or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976; and
- (c) against whose name in that register is recorded an annotation signifying that he is qualified to order drugs, medicines and Appliances as a pharmacist independent Prescriber;

**“Physiotherapist Independent Prescriber”** means a physiotherapist who is registered in Part 9 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 physiotherapist is qualified to order drugs, medicines and Appliances as a physiotherapist independent Prescriber;

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

**“Practice”** means the business operated by the Contractor for the purpose of delivering Services under this Agreement;

**“Practice Area”** means the geographical area from time to time in respect of the population of which the Board is legally responsible for the provision of or payment for healthcare services;

**“Practice Leaflet”** means a leaflet drawn up in accordance with Schedule 12 of this Agreement

**“Practice Premises”** means the address specified in Schedule 7 of this Agreement as one at which Services are to be provided under this Agreement;

**“Prescriber”** means:

- (a) a Chiropodist or Podiatrist Independent Prescriber;
- (b) an Independent Nurse Prescriber;
- (c) a medical practitioner;
- (d) an Optometrist Independent Prescriber;
- (e) a Pharmacist Independent Prescriber;
- (f) a Physiotherapist Independent Prescriber; and
- (g) a Supplementary Prescriber;

who is either engaged or employed by the Contractor or is a party to this Agreement;

**“Prescription Form”** means, except in the context of the expression “Electronic Prescription Form” or “Non-Electronic Prescription Form”:

- (a) a form for the purpose of ordering a drug, medicine or Appliance which is:
  - (i) provided by the Board, a local authority or the Secretary of State;
  - (ii) issued by the Prescriber; and
  - (iii) does not indicate that the drug, medicine or Appliance ordered may be ordered more than once; or
- (b) where paragraph 3 of Schedule 4 to this Agreement 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”** means a medicine referred to in regulation 5(3) (classification of medicinal products) of the Human Medicines Regulations 2012;

**“Primary Care List”** means:

- (a) a list of persons performing Primary Medical Services, primary ophthalmic services or dental services under section 91, section 123 or section 106 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) above prepared in accordance with regulations made under the 2006 Act;
- (d) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001; or
- (e) a list corresponding to any of the above lists in Scotland or Northern Ireland;

**“Primary Care Trust”** means, unless the context otherwise requires, the Primary Care Trust which was a party to the Agreement immediately before the coming into force of section 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012;

**“Primary Carer”** means, in relation to an adult, the adult or organisation primarily caring for him;

**“Prohibited Act”** means:

- (a) offering, giving or agreeing to give the Board or any other public body or any person employed by or on behalf of any of the

foregoing any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Board or any other public body; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Board or any other public body;
- (b) entering into this Agreement or any other agreement with the Board or any other public body in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in Writing to the Board;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under any law, creating offences in respect of fraudulent acts; or
  - (iii) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Board or any other public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Board or any other public body or any Patient;

**“Registered Patient”** means:

- (a) a person who is recorded by the Board pursuant to paragraph 3 of Schedule 5 to this Agreement as being on the Contractor's List of Patients; or

- (b) a person whom the Contractor has accepted for inclusion on its List of Patients, whether or not notification of that acceptance has been received by the Board and who has not been notified by the Board as having ceased to be on that list;

**“Relevant Body”** means:

- (a) in a case where a Contractor is a party to an agreement with a Primary Care Trust immediately before the coming into force of section 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012, that Primary Care Trust; and
- (b) in the case where a Contractor is a party to an agreement with a Strategic Health Authority immediately before the coming into force of section 33 (abolition of Strategic Health Authorities) of the Health and Social Care Act 2012, that Strategic Health Authority;

**“Relevant Register”** means:

- (a) in relation to a nurse, the Nursing and Midwifery Register; in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954 or the register maintained in pursuance of
- (b) in relation to a pharmacist, Part 1 of the register maintained under article 19 of the Pharmacy Order 2010 or the register maintained in pursuance of articles 6 (the registers) and 9 (the registrar) 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;

**“Relevant Strategic Health Authority”** means, unless the context otherwise requires, the Strategic Health Authority established for an area which includes the area for which the Primary Care Trust was established and subsisted immediately before the coming into force of section 33 and section 34 of the Health and Social Care Act 2012;

**“Remedial Notice”** means a notice on the Contractor requiring it to remedy its breach of this Agreement;

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

**“Repeatable Prescriber”** means a Prescriber who is:

- (a) engaged or employed by the Contractor which provides Repeatable Prescribing Services under the terms of this Agreement which give effect to paragraph 5 of Schedule 4 to this Agreement, or
- (b) a party to an agreement under which such Services are provided;

**“Repeatable Prescribing Services”** means services which involve the prescribing of drugs, medicines or Appliances on a Repeatable Prescription;

**“Repeatable Prescription”** means, 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 Board, 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 the 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 paragraph 3.1 of Schedule 4 applies, is data created in an electronic form for the purposes 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) indicates that the drug, medicine or Appliance ordered may be provided more than once and specifies the number of occasions on which they may be provided;

**“Restricted Availability Appliance”** means an Appliance which is approved for particular categories of persons or particular purposes only;

**“Scheduled Drug”** means:

- (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 this Agreement; or
- (b) except where the conditions in paragraph 7.2 of Schedule 4 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;

**“Serious Incident Reporting”** means the reporting process as set out in the Board’s incident reporting policy ;

**“Strategic Health Authority”** means, except where the context otherwise requires, the Strategic Health Authority which is a party, or prospective party, to this Agreement;

**“Secretary of State”** means the Secretary of State for Health from time to time;

**“Service Environment”** means any of the sites listed in Schedule 7;

**“Services”** means the Services set out in Schedule 1 (the **“Service Specification”**) to be provided by the Contractor in accordance with the provisions of this Agreement;

**“Statement of National Minimum Standards”** means any statement issued by the Department of Health specifying minimum standards in respect of services equivalent or similar in whole or in part to the Services and in respect of which the Contractor must use its best endeavours to comply;

**“Supplementary Prescriber”** means a person:

- (a) who is either engaged or employed by the Contractor or is a party to this Agreement;
- (b) whose name is registered in:
  - (i) the Nursing and Midwifery Register;
  - (ii) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010;
  - (iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976;

- (iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health and Social Work Professions Order 2001 relating to:
    - (aa) chiropodists and podiatrists;
    - (bb) physiotherapists; or
    - (cc) radiographers: diagnostic or therapeutic, or
  - (v) the register of optometrists maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989; and
- (c) against whose name is recorded in the Relevant Register an annotation or entry signifying that he is qualified to order drugs medicines and Appliances as a Supplementary Prescriber or, in the case of the Nursing and Midwifery Register, a Nurse Independent/Supplementary Prescriber;

**“System of Clinical Governance”** means 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”** means a person accepted by the Contractor as a Temporary Resident under paragraph 5 of Schedule 5 to this Agreement and for whom the Contractor's responsibility has not been terminated in accordance with that paragraph;

**“Termination Date”** means the date that termination of all or part of this Agreement takes effect;

**“Transferring Employees”** means the employees of the Board or any provider 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 Board or any such provider (as the case may be) to whom TUPE applies by operation of law as a

consequence of this Contract whose names are set out in Annex 1 of Schedule 11;

**“TUPE”** means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended from time to time and any other statute or statutory provision which may from time to time implement or purport to implement the Acquired Rights Directive (2001/23/EC) as the same may be amended from time to time;

**“Working Day”** means any day apart from Saturday, Sunday, Good Friday, Christmas Day or a Bank Holiday; and

**“Writing”**, except in clause 98 of this Agreement and unless the context otherwise requires, includes electronic mail and “written” should be construed accordingly.

1.2 In this Agreement unless the context otherwise requires:

1.2.1 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

1.2.2 reference to any person may include a reference to any firm, company or corporation;

1.2.3 reference to the “parties” means the parties to this Agreement and reference to a “party” means either of them;

1.2.4 references in this Agreement to a “Schedule” and “clause” are a reference to a schedule, appendix, annex or a clause of this Agreement and all schedules to it;

1.2.5 a reference in a schedule, appendix or annex to a “paragraph” is a reference to a paragraph of that schedule, appendix or annex;

1.2.6 the words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class

as any preceding words where a wider construction is possible;

- 1.2.7 references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over both or either of the functions and/or responsibilities of such public organisation;
- 1.2.8 reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate;
- 1.2.9 the headings in this Agreement are inserted for convenience only and do not affect the construction or interpretation of this Agreement;
- 1.2.10 the schedules to this Agreement are and shall be construed as being part of this Agreement;
- 1.2.11 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 this Agreement), and all statutory instruments or orders made pursuant to it;
- 1.2.12 any obligation relating to the completion and submission of any form that the Contractor is required to complete and submit to the Board includes the obligation to complete and submit the form in such a format or formats (electronic, paper or otherwise) as the Board may specify;
- 1.2.13 any obligation on the Contractor to have systems, procedures or controls includes the obligation effectively to operate them;
- 1.2.14 where this Agreement imposes an obligation on a party, that party must comply with it and must take all reasonable steps to ensure that its personnel and sub-Contractors

(except to the extent one party's sub-Contractor is the other party) comply with it;

- 1.2.15 the parties shall, so far as is possible, interpret the provisions of this Agreement consistently with the European Convention on Human Rights, EU law and any other relevant regulations, orders or directions made under the 2006 Act; and
- 1.2.16 the clause numbers and cross-references are inserted for convenience only and do not affect the construction and interpretation of this Agreement. 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 PMS Regulations, shall take precedence.

## **2 Status of this Agreement**

- 2.1 The parties acknowledge that the Contractor [is/ is not]<sup>3</sup> a Health Service Body for the purposes of section 9 of the 2006 Act and accordingly understand that this Agreement [is/is not]<sup>4</sup> an NHS Contract.

## **3 Commencement and Duration of this Agreement**

- 3.1 This Agreement shall come into force on the Commencement Date and shall last until it is terminated in accordance with the terms of this Agreement or the general law.

## **4 Representatives**

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<sup>3</sup> For local determination. If the Contractor has elected to be regarded as a health service body for the purposes of section 9 of the 2006 Act pursuant to regulation 9 of the Regulations, then the Agreement must state that it is an NHS contract.

<sup>4</sup> For local determination. Where the agreement is an NHS contract, it is not enforceable in the courts but instead is subject to the NHS Dispute Resolution Procedure. Therefore, the Agreement must specify whether or not the Contractor has elected to be regarded as a health service body, and if it has, the Contractor must indicate that the Agreement is an NHS contract.

- 4.1 The Contractor shall appoint a representative (the “**Contractor Representative**”) and shall promptly notify any change in the identity of the Contractor Representative to the Board in Writing. The Contractor Representative shall be the key point of contact at the Contractor for the Board to whom the Board may refer all queries and day-to-day communications regarding the operation of this Agreement in the first instance.
- 4.2 The Board shall appoint a representative (the “**Board Representative**”) and shall promptly notify any change in the identity of the Board Representative to the Contractor in Writing. The Board Representative shall be the key point of contact at the Board for the Contractor to whom the Contractor may refer all queries and day-to-day communications regarding the operation of this Agreement in the first instance.

## **5 Performance and Warranties**

- 5.1 The Board appoints the Contractor to provide the Services commencing on the Commencement Date and continuing for the duration of this Agreement in consideration of the Annual Contract Value, and in accordance with and subject to the provisions of this Agreement.
- 5.2 Each of the parties warrants that it has power to enter into this Agreement and has obtained any necessary approvals to do so.
- 5.3 The Contractor warrants that the Contractor satisfies the conditions set out in Regulation 5 of the PMS Regulations.
- 5.4 In complying with this Agreement, in exercising its rights under this Agreement and in performing its obligations under this Agreement the Contractor must act reasonably and in good faith and shall cooperate fully with the Board at all times.
- 5.5 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 this Agreement.

- 5.6 The Contractor warrants that it has used all reasonable endeavours to ensure:
- 5.6.1 all information in Writing provided to the Board in seeking to become a party to this Agreement was, when given, true and accurate in all material respects, and in particular, that the Contractor satisfied the conditions set out in Regulation 5 of the PMS Regulations;
  - 5.6.2 no information has been omitted which would make the information that was provided to the Board materially misleading or inaccurate;
  - 5.6.3 no circumstances have arisen which materially affect the truth and accuracy of such information;
  - 5.6.4 it is not aware as at the date of this Agreement of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Agreement.
- 5.7 To the best of the Board's knowledge after due enquiry by the Board, the Board warrants that it has used all reasonable endeavours to ensure:
- 5.7.1 all information in Writing which it provided to the Contractor specifically to assist the Contractor to become a party to this Agreement was, when given, true and accurate in all material respects;
  - 5.7.2 no information has been omitted which would make the information that was provided to the Contractor materially misleading or inaccurate;
  - 5.7.3 no circumstances have arisen which materially affect the truth and accuracy of such information.

## **6 Membership of a CCG**

- 6.1 Where the Contractor provides Essential Services to Patients on its List of Patients, the Contractor must be a member of a CCG and the particular CCG is listed in Schedule 9.
- 6.2 The Contractor must appoint one individual who is a Health Care Professional to act on its behalf in the dealings between the Contractor and the CCG to which it belongs and the individual is listed in Schedule 9.

## **7 Services and Attendance on Patients**

- 7.1 Subject to clauses 7.2, 73 and 82 the Contractor shall provide the Services to all Patients in accordance with:
  - 7.1.1 this Agreement and the Service Specification; and
  - 7.1.2 all laws applicable to it.
- 7.2 The Contractor must provide Essential Services and such other Services that it is required to provide under this Agreement to those Patients, at such time, within Core Hours, as are appropriate to meet the reasonable needs of its Patients.
- 7.3 The Contractor must have in place arrangements for its Patients to access Essential Services and such other Services that it is required to provide under this Agreement throughout the Core Hours in case of emergency.
- 7.4 Nothing in this Agreement shall require the Contractor to provide or continue to provide the Services to Patients:
  - 7.4.1 who have not validly consented and were able to do so, or had consent validly given on their behalf where it could have been, to the treatment provided under the Services; or
  - 7.4.2 for any unreasonable behaviour unacceptable to the Contractor, the Staff or the Contractor's consultant clinically responsible for the management of the care of

such Patients notwithstanding that the judgements in those cases must take into account the mental health of such Patients.

7.5 Where the Contractor proposes to refuse to provide or continue to provide the Services to any Patient under this clause 7:

7.5.1 the Contractor shall explain to the Patient:

7.5.1.1 the action that it is taking and the reasons for such action, following up any verbal explanations in Writing within one Business Day of such explanation being given; and

7.5.1.2 that the Patient has the right to challenge the Contractor's decision through any relevant complaints procedure.

7.5.2 where appropriate the Contractor and the Board shall use all reasonable endeavours, including discussions with the Patient and/or where appropriate the Patient's GP or medical consultant, to resolve the issue of the treatment or continued treatment of the Patient in a way which minimises any disruption to the Patient's care. Where the parties cannot agree about the Contractor's treatment or continued treatment of the Patient, the Contractor shall (subject to any discharge requirements) notify the Board that it will discontinue treatment of that Patient under the Services and the Board shall make all necessary alternative treatment arrangements for that Patient.

7.6 Subject to clause 7.4.1, nothing in this clause 7 shall be deemed to enable or permit the Contractor to:

7.6.1 refuse or withhold any treatment which is urgently required by any Patient and the Contractor shall ensure that its Staff take appropriate clinical advice in determining whether such treatment is urgently required; or

- 7.6.2 refuse or withhold any treatment on the grounds of the behaviour of any person other than the Patient.

## **Premises**

- 7.7 Subject to any plan which is included in this Agreement for bringing the Contractor's Premises up to the required standard, the Contractor shall ensure that the Premises used for the provision of Services under this Agreement are:
  - 7.7.1 suitable for the delivery of those Services; and
  - 7.7.2 sufficient to meet the reasonable needs of the Contractor's Patients.

## **Attendance at Practice Premises**

- 7.8 The Contractor shall take steps to ensure that any Patient who:
  - 7.8.1 has not previously made an appointment; and
  - 7.8.2 attends at the Contractor's Premises during the normal hours for Essential Services,is provided with such Services by an appropriate Health Care Professional during that surgery period except in the circumstances specified in clause 7.9.
- 7.9 The circumstances referred to in clause 7.8 are that:
  - 7.9.1 it is more appropriate for the Patient to be referred elsewhere for Services under the 2006 Act; or
  - 7.9.2 he is then offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and his health would not thereby be jeopardised.

## **Attendance outside Practice Premises**

- 7.10 In the case of a Patient whose medical condition is such that in the reasonable opinion of the Contractor attendance on the Patient is

required and it would be inappropriate for the Patient to attend at the Contractor's Premises, the Contractor shall provide the Services to that Patient at whichever location in its judgement is the most appropriate of:

- 7.10.1 the place recorded in the Patient's medical records as being his last home address; or
- 7.10.2 such other place as the Contractor has informed the Patient (and the Board) is the place where it has agreed to visit and treat the Patient; or
- 7.10.3 some other place in the Contractor's Practice Area.

7.11 Nothing in clause 7.10 and shall prevent the Contractor from:

- 7.11.1 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
- 7.11.2 visiting the Patient in circumstances where clause 7.10 does not put the Contractor under an obligation to do so.

## **Telephone Services**

7.12 The Contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used by:

- 7.12.1 Patients to contact the Practice for any purpose related to this Agreement; or
- 7.12.2 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 or consists of a personal number, unless the service is provided free to the caller.

7.13 In clause 7.12, "personal number" means a telephone number which starts with the number 070 followed by a further 8 digits.

## **Cost of Relevant Calls**

- 7.14 The Contractor must not enter into, renew or extend a contract or other arrangement for telephone services unless it is satisfied that, having regard to the arrangement as a whole, persons will not pay more to make calls to the practice than they would to make equivalent calls to a geographical number.
- 7.15 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 call a number which is not a geographical number, the Contractor must comply with clause 7.16.
- 7.16 The Contractor must:
- 7.16.1 before 1st April 2011, 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
  - 7.16.2 if the Contractor so considers, take all reasonable steps, including in particular considering the matters specified in clause 7.17, 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.
- 7.17 The matters referred to in clause 7.16 are:
- 7.17.1 varying the terms of the contract or arrangement;
  - 7.17.2 renegotiating the terms of the contract or arrangement; and
  - 7.17.3 terminating the contract or arrangement.
- 7.18 If, despite taking all reasonable steps referred to in clause 7.16.2, 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 than they would to make equivalent calls to a geographical number, the Contractor must consider introducing a system under which if a caller

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

7.19 In clauses 7.14 to 7.19:

7.19.1 "existing contract or other arrangement" means a contract or arrangement that was entered into prior to 1st April 2010 and which remains in force on 1st April 2010;

7.19.2 "geographical number" means a number which has a geographical area code as its prefix; and

7.19.3 calls" means calls:

7.19.3.1 made by Patients to the practice for any reason related to Services provided under this Agreement, and

7.19.3.2 made by persons, other than Patients, to the practice in relation to Services provided as part of the health service.

7.20 Where the Contractor is to cease to be required to provide to its Patients a particular service or 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 Board or by any person with whom the Board intends to enter into an agreement, for the provision of such services.

## **8 Service Environment**

8.1 The Contractor shall at all times comply with all Law, regulation, requirement and Good Practice applicable to it, in relation to the Premises and the Equipment and ensure the Premises and the Equipment:

8.1.1 is suitable for the performance of the Services;

- 8.1.2 complies with any applicable Law and Good Practice relating to health and safety and is a safe Premises in which to provide the Services; and
- 8.1.3 is sufficient to enable the Services to be provided at all times and in all respects in accordance with this Agreement.

8.2 The Contractor shall store and use all Equipment strictly in accordance with the manufacturer's instructions, and any written clarification provided by the manufacturer.

## **9 Quality Standards**

9.1 Without prejudice to the Contractor's obligations to meet all performance requirements under this Agreement the Contractor shall meet all NHS requirements notified to it by the Board and in particular the core quality standards set out in Standards for Better Health published by the Department of Health in July 2004 (and as further amended, updated or replaced from time to time) to the extent that they apply to the Services.

9.2 The Contractor shall carry out the Services in accordance with Good Practice and shall comply with the standards and recommendations:

- 9.2.1 contained in the Fundamental Standards;
- 9.2.2 issued by the National Institute for Health and Care Excellence;
- 9.2.3 issued by any relevant professional body and agreed between the parties; and
- 9.2.4 from any audit and serious untoward incident and Serious Incident Reporting,

9.3 The Contractor shall ensure that:

- 9.3.1 all Staff are informed and aware of the standard of performance they are required to provide and are able to meet that standard;
- 9.3.2 the adherence of the Staff to such standards of performance shall be routinely monitored and that remedial action shall be promptly taken where such standards are not attained;
- 9.3.3 it shall provide to the Board upon request such evidence as the Board may reasonably request in order to demonstrate compliance with its obligations under this clause 9.

9.4 The Contractor will co-operate with Patient satisfaction surveys that may be carried out by the Department of Health, the Board or any other appropriate NHS body. Details of such arrangements are to be made available to the Board on request. In discharging its obligations under this clause 9 the Contractor shall have regard to any Department of Health guidance relating to Patient satisfaction surveys.

## **10 Level of Skill**

- 10.1 Without prejudice to the Contractor's obligations to meet all performance requirements under this Agreement, the Contractor shall carry out its obligations under this Agreement with reasonable skill and care.

## **11 Clinical Governance**

- 11.1 Without prejudice to the Contractor's obligation to meet all performance requirements under this Agreement including the obligation on the Contractor to comply with Standards for Better Health and comply with the Board's reasonable instructions from time to time (including compliance with the Board's clinical governance requirements as notified to the Contractor and amended from time to time), the Contractor shall have in place an effective System of Clinical Governance which shall include appropriate standard operating

procedures in relation to the management and use of controlled drugs. The Contractor shall nominate a person who will have responsibility for ensuring the effective operation of the System of Clinical Governance and shall notify the Board of the identity of this individual. The person nominated shall be a person who performs or manages services under this Agreement.

- 11.2 In clause 11.1 “System of Clinical Governance” means a framework through which the Contractor endeavours to continuously improve the quality of its services and safeguards high standards of care by creating an environment in which clinical excellence can flourish.
- 11.3 The Contractor must co-operate with the Board in the discharge of any obligations of the Board 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.

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

- 12.1 Subject to clause 12.2, where the Contractor provides any clinical services under this Agreement to any Patient other than under a private arrangement with that Patient, 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 the Contractor shall, as soon as reasonably practicable, provide a copy of the Clinical Report to the Board. The Board shall send any Clinical Report received to either:
- 12.1.1 the person with whom the Patient is registered for the provision of Essential Services or their equivalent; or
- 12.1.2 if the Patient referred to in clause 12.1.1 is not known to the Board, to the Local Health Board, Health Board or Health and Social Services Board, in whose area the Patient is resident.

- 12.2 This clause 12 does not apply in relation to Out of Hours Services provided by a Contractor which is required pursuant to clause 16 to comply with the quality standards or requirements referred to in that clause.
- 12.3 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.
- 12.4 The Board will use its reasonable endeavours to ensure the co-operation of any such other clinician as is mentioned in clause 12.3 above with the Contractor.

## **13 Storage of Vaccines**

- 13.1 The Contractor shall ensure that:
- 13.1.1 all vaccines are stored in accordance with the manufacturer's instructions; and
  - 13.1.2 all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that readings are taken on all Business Days.

## **14 Infection Control**

- 14.1 The Contractor shall ensure that it has appropriate arrangements for infection control and decontamination.

## **15 Criteria for Out of Hours Services**

- 15.1 Where under this Agreement, the Contractor is to provide Out of Hours Services, the Contractor shall only be required to provide such Services if, in the reasonable opinion of the Contractor in the light of the Patient's medical condition, it would not be reasonable in all the circumstances for the Patient to wait for the Services required until the next time at which he could obtain such Services during Core Hours.

## **16 Out of Hours Services: Quality Standards and Monitoring**

### **16.1 Where a Contractor:**

16.1.1 provides Out of Hours Services to the Registered Patients of another Contractor or provider of Essential Services or their equivalent; or

16.1.2 has contracted to provide Out of Hours Services to Patients to whom it provides Essential Services,

the Contractor must, in the provision of those services, 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 and 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.

### **16.2 Where a Contractor is a provider of Essential Services but does not provide Out of Hours Services, the Contractor must:**

16.2.1 monitor the quality of the Out of Hours Services which are offered or provided to its Registered Patients having regard to the National Quality Standards referred to in clause 16.1 and record, and act appropriately in relation to, any concerns arising;

16.2.2 record any Patient feedback received including any complaints; and

16.2.3 report to the Board, either at the request of the Board or otherwise, any concerns arising about the quality of the Out of Hours Services which are offered or provided to its Registered Patients having regard to:

16.2.3.1 any Patient feedback received, including any complaints, and

16.2.3.2 the quality requirements set out in the National Quality Standards referred to in clause 16.1.

## **17 Supply of Medicines etc. by Contractor providing Out of Hours Services**

17.1 In this clause:

“complete course” means the course of treatment appropriate to the Patient's condition, being the same as the amount that would have been prescribed if the Patient had been seen during Core Hours;

“necessary drugs, medicines and Appliances” means those drugs, medicines and Appliances which the Patient requires and for which, in the reasonable opinion of the Contractor, and in the light of the Patient's medical condition, it would not be reasonable in all the circumstances for the Patient to wait until such time as he could obtain them during Core Hours;

“out of hours performer” means a Prescriber, a person acting in accordance with a Patient Group Direction or any other Health Care Professional employed or engaged by the Contractor who can lawfully supply a drug, medicine or Appliance, who is performing Out of Hours Services under this Agreement;

“Patient Group Direction” has the same meaning as in the Prescription Only Medicines (Human Use) Order 1997; and

“supply form” means a form provided by the Board and completed by or on behalf of the Contractor for the purpose of recording the provision of drugs, medicines or Appliances to a patient during the Out of Hours Period.

17.2 Where a Contractor provides Out of Hours Services and has agreed with the Board under this Agreement that it should also include the supply of necessary drugs, medicines and Appliances to Patients at the time that it is providing them with Out of Hours Services, the Contractor shall comply with the requirements in clauses 17.3 to 17.5.

17.3 The Contractor shall ensure that an out of hours performer:

17.3.1 only supplies necessary drugs, medicines and Appliances;

17.3.2 supplies the complete course of the necessary medicine or drug required to treat the Patient; and

17.3.3 does not supply:

17.3.3.1 drugs, medicines or Appliances which he could not lawfully supply;

17.3.3.2 Appliances which are not listed in Part IX of the Drug Tariff;

17.3.3.3 restricted availability Appliances, except where the Patient is a person, or it is for a purpose, specified in the Drug Tariff; or

17.3.3.4 a drug, medicine or other substance listed in Schedule 1 to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004, or a drug, medicine or other substance listed in Schedule 2 to those Regulations other than in the circumstances specified in that Schedule.

17.4 The out of hours performer shall record on a separate supply form for each Patient any drugs, medicines or Appliances supplied to the Patient provided that a single supply form may be completed where the out of hours performer supplies necessary drugs, medicines or Appliances to two (2) or more persons in a school or other institution in which at least

twenty (20) persons normally reside, when the out of hours performer may write on the supply form the name of the school or institution rather than the name of the individual Patient.

17.5 The out of hours performer shall:

17.5.1 ask any person who makes a declaration that the Patient does not have to pay any of the charges specified in regulations made under sections 172 (charges for drugs, medicines or appliances, or pharmaceutical services) and 174 (pre-payment certificates) of the 2006 Act in respect of dispensing services to a Patient by virtue of either:

17.5.1.1 entitlement to exemption under regulations made under those sections; or

17.5.1.2 entitlement to full remission of charges under regulations made under sections 182 (remission and repayment of charges) or 183 (payment of travelling expenses) of the 2006 Act,

to produce satisfactory evidence of such entitlement, unless at the time of the declaration such evidence is available to the out of hours performer; and

17.5.2 if no satisfactory evidence is produced to him (and, where it is relevant, none is already available to him as mentioned in clause 17.5.1), endorse the supply form to that effect.

17.6 Subject to clause 17.7, nothing in this clause 17 shall prevent an out of hours performer supplying a Scheduled drug or a restricted availability Appliance in the course of treating a Patient under a private arrangement.

17.7 The provisions of regulation 15 (fees and charges) of the PMS Regulations apply in respect of the supply of necessary drugs, medicines and Appliances under this clause 17 as they apply in respect of prescriptions for drugs, medicines and Appliances.

## **18 Opt outs of Out of Hours Services**

- 18.1 Where an agreement made on or after 1st October 2004 with a Contractor requires the Contractor to provide Out of Hours Services (pursuant to regulation 20 of the PMS Regulations) and the Contractor has contracted to provide Out of Hours Services only to Patients which it is required to provide Essential Services to under this Agreement, the Contractor must follow the procedure for opting out of those services as contained in clause 18.2 to 18.16.
- 18.2 Clauses 18.2 to 18.14 apply where the Contractor serves an out of hours opt out notice on or after 1st April 2013.
- 18.3 In clauses 18.2 to 18.14:
- “OOH day” is the day specified by the Contractor in its out of hours opt out notice to the Board for the commencement of the out of hours opt out;
- “B day” is the day six (6) months after the date of service of the out of hours opt out notice; and
- “C day” is the day nine (9) months after the date of service of the out of hours opt out notice.
- 18.4 A Contractor which falls within clause 18.1 and which wishes to terminate its obligation to provide Out of Hours Services shall notify the Board in Writing to that effect (“an out of hours opt out notice”).
- 18.5 An out of hours opt out notice shall specify the date from which the Contractor would like the opt out to take effect, which must be either three (3) or six (6) months after the date of service of the out of hours opt out notice.
- 18.6 As soon as is reasonably practicable and in any event within twenty eight (28) days of receiving the out of hours opt out notice, the Board shall approve the notice and specify in accordance with clause 18.7 the date on which the out of hours opt out is to commence (“OOH day”).

The Board shall notify the Contractor of its decision as soon as possible.

- 18.7 The date specified in clause 18.6 shall be the date specified in the out of hours opt out notice.
- 18.8 A Contractor may not withdraw an out of hours opt out notice once it has been approved by the Board under clause 18.6 without the Board's agreement.
- 18.9 Following receipt of the out of hours opt out notice, the Board must use its reasonable endeavours to make arrangements for the Contractor's Registered Patients to receive the Out of Hours Services from an alternative provider from OOH day.
- 18.10 The Contractor's duty to provide the Out of Hours Services shall terminate on OOH day unless the Board serves a notice under clause 18.11 (extending OOH day to B day or C day).
- 18.11 If the Board is not successful in finding an alternative provider to take on the provision of the Out of Hours Services from OOH day, then it shall notify the Contractor in Writing of this fact no later than one month before OOH day, and:
  - 18.11.1 in a case where OOH day is three (3) months after service of the out of hours opt out notice, the Contractor shall continue to provide the Out of Hours Services until B day unless at least one (1) month before B day it receives a notice in Writing from the Board under clause 18.12 that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the Out of Hours Services from B day;
  - 18.11.2 in a case where OOH day is six (6) months after the service of the out of hours opt out notice, the Contractor shall continue to provide the Out of Hours Services until C day.

- 18.12 Where in accordance with clause 18.11.1 the opt out is to commence on B day and the Board, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of the Out of Hours Services from that day, it shall notify the Contractor in Writing of this fact at least one (1) month before B day, in which case the Contractor shall continue to provide the Out of Hours Services until C day.
- 18.13 As soon as is reasonably practicable and in any event within seven (7) days of the Board serving a notice under clause 18.12, the Board shall enter into discussions with the Contractor concerning the support that the Board may give to the Contractor or other changes which the Board or the Contractor may make in relation to the provision of the Out of Hours Services until C day.
- 18.14 The opt out takes effect at 08.00 on the relevant day unless:
- 18.14.1 the day is a Saturday, Sunday, Good Friday, Christmas Day, or a bank holiday, in which case the opt out shall take effect on the next working day at 08.00; or
  - 18.14.2 the Board and the Contractor agree a different day or time.

### **Informing patients of opt outs**

- 18.15 Prior to any out of hours opt out taking effect, the Board and the Contractor shall discuss how to inform patients of the proposed opt out.
- 18.16 The Contractor shall, if requested by the Board inform its Registered Patients of an opt out and the arrangements made for them to receive the Out of Hours Services by:
- 18.16.1 placing a notice in the Contractor's waiting rooms; or
  - 18.16.2 including the information in the Contractor's Practice Leaflet.

## **19 Staff**

- 19.1 The Contractor shall employ or engage sufficient clinical and non-clinical staff, in accordance with Good Clinical Practice to ensure that the Services are provided at all times and in all respects in accordance with this Agreement to the levels set out in this Agreement. In particular, the Contractor shall ensure that a sufficient reserve of trained and competent staff is available to provide the Services in accordance with this Agreement during holidays or absences due to contractual or statutory leave entitlements, sickness or voluntary absence and anticipated and actual peaks in demand for each of the Services, or Services in excess of the levels set out in this Agreement.
- 19.2 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 Agreement, including without limitation the performance of the Services.
- 19.3 The Contractor shall ensure (at its own cost) that all Contractor Staff undergo reasonable medical screening, examination or tests if requested by the Board at any time after their appointment and answer any question or supply any information pertaining to their health which the Board may reasonably ask or require.
- 19.4 The Contractor will maintain detailed records of all Contractor Staff 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 19, 20, and 20.6 to 21.16 as may be reasonably required and these records will be available to the Board on reasonable request.
- 19.5 Before the Contractor engages or employs any person in the provision of the Services, or in any activity related to, or connected with the

provision of the Services, the Contractor shall comply with the following guidance as amended from time to time:

- 19.5.1 NHS Employment Check Standards; and
- 19.5.2 such other checks as required by the Disclosure and Barring Service or which are to be undertaken in accordance with current and future national guidelines and policies.

19.6 The Contractor shall employ or engage in the provision of the Services only such persons who:

- 19.6.1 are registered with the appropriate professional body (where relevant);
- 19.6.2 possess the appropriate qualifications, experience and skill to perform the duties required of them and where this is not the case that such persons are appropriately supervised; and
- 19.6.3 are careful, skilled and competent in practising those duties.

19.7 The Contractor shall ensure that every Staff member involved with the provision of the Services:

- 19.7.1 receives a proper and sufficient training and instruction in accordance with Good Practice and with the standards of their relevant professional body, if any, in the execution of their duties;
- 19.7.2 has reasonable opportunity to undertake the appropriate training with a view to maintaining that Staff member's competence;
- 19.7.3 receives full and detailed appraisal in terms of performance and on-going education and training in accordance with the standards of their relevant professional body if any; and
- 19.7.4 carries out the Services with regard to:

- 19.7.4.1 the required task that Staff members have to perform;
  - 19.7.4.2 the provisions of this Agreement;
  - 19.7.4.3 fire risks and fire precautions; and
  - 19.7.4.4 Good Practice standards of hygiene, courtesy and consideration.
- 19.7.5 are provided with all necessary and appropriate support to facilitate them in developing career progression pathways.

## **20 Persons Who Shall Perform the Services**

### **Qualifications of Performers**

- 20.1 Subject to clause 20.2 no medical practitioner shall perform medical services under this Agreement unless he is:
- 20.1.1 included in a Medical Performers List; and
  - 20.1.2 not suspended from that list; or
  - 20.1.3 not suspended from the Medical Register; or
  - 20.1.4 not subject to interim suspension under section 41A of the Medical Act 1983 (interim orders).
- 20.2 Clause 20.1.1 shall not apply in the case of:
- 20.2.1 a medical practitioner employed by (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, (in Scotland) a Health Board, or (in Northern Ireland) a Health and Social Services Trust who is providing services other than primary medical services at the Premises;
  - 20.2.2 a person who is provisionally registered under section 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;

20.2.3 a GP Registrar who has applied to the Board to have his name included in its Medical Performers List until either the Board 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 Certificate of Completion of Training awarded under section 34L(1) (award and withdrawal of a Certificate of Completion of Training) of the Medical Act 1983;

20.2.4 a medical practitioner who:

20.2.4.1 is not a GP Registrar;

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

20.2.4.3 has notified the Board that he will be undertaking part or all post-graduate programme in its area at least 24 hours before commencing any part of that programme Board; and

20.2.4.4 has, with that notification, provided the Board with evidence sufficient for it to satisfy itself 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.

20.3 No Health Care Professional other than one to whom clauses 20.1 and 20.2 apply shall perform clinical services under this Agreement unless he is registered with his relevant professional body and his registration is not currently suspended.

20.4 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 this Agreement.

- 20.5 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 in accordance with the PMS Regulations.

### **Conditions for employment and engagement**

- 20.6 Subject to clauses 20.7 and 20.8 no Medical Practitioner (other than one falling within clause 20.2) shall be employed or engaged by the Contractor unless:

- 20.6.1 that practitioner has provided it with documentary evidence that the practitioner is on the medical performers list; and
- 20.6.2 the Contractor has checked that the Medical Practitioner meets the requirements in clause 20.1 and 20.2.

- 20.7 Where the employment or engagement of a Medical Practitioner is urgently needed and it is not possible for the Contractor to check the matters referred to in clause 20.3 in accordance with clause 20.6.2 before employing or engaging him he may be employed or engaged on a temporary basis for a single period of up to seven days whilst such checks are undertaken.

- 20.8 Where the prospective Staff member is a GP Registrar, the requirements set out in clause 20.6 above shall apply with the modifications that:

- 20.8.1 the GP Registrar has provided documentary evidence of the GP Registrar's application to the Board for inclusion on the medical performers list; and
- 20.8.2 confirmation that his name appears on that list shall not be required until the end of the first two (2) months of the Registrar's training period.

- 20.9 The Contractor shall not employ or engage:

- 20.9.1 a Health Care Professional other than one to whom clauses 20.1 and 20.2 apply unless the Contractor has first checked that he meets the requirements in clause 20.3; or
  - 20.9.2 a Health Care Professional to perform clinical services unless he has taken reasonable steps to satisfy himself that he meets the requirements in clause 20.5.
- 20.10 Where the employment or engagement of a Health Care Professional is urgently needed and it is not possible to check the matters referred to in clause 20.3 in accordance with clause 20.9 before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to seven (7) days whilst such checks are undertaken.
- 20.11 When considering a Health Care Professional's experience and training for the purposes of clause 20.9.2, the Contractor shall have regard in particular to:
  - 20.11.1 any post-graduate or post-registration qualification held by the Health Care Professional; and
  - 20.11.2 any relevant training undertaken by him and any relevant clinical experience gained by him.
- 20.12 The Contractor shall notify the Board as soon as possible in the event that any Health Care Professional is:
  - 20.12.1 referred to the relevant professional body for alleged misconduct; or
  - 20.12.2 removed from the Relevant Register.
- 20.13 The Contractor shall not employ or engage a Health Care Professional to perform medical services under this Agreement (other than a medical practitioner falling under clause 20.2.4) unless:
  - 20.13.1 that person has provided two clinical references, relating to two (2) recent posts (which may include any current post) as a Health Care Professional which lasted for three (3)

months without a significant break, or where this is not possible, a full explanation and alternative referees; and

20.13.2 the Contractor has checked and is satisfied with the references.

20.14 Where the Contractor employs or engages the same person on more than one occasion within a period of three (3) months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve (12) months old.

20.15 Before employing or engaging any person to assist it in the provision of the Services under this Agreement, 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.

20.16 When considering the competence and suitability of any person for the purpose of clause 20.15, the Contractor shall have regard, in particular, to:

20.16.1 that person's academic and vocational qualifications;

20.16.2 his education and training; and

20.16.3 his previous employment or work experience.

For the avoidance of doubt, Clauses 21.18 to 21.11 inclusive shall be without prejudice to clause 19.2.

20.17 The Contractor shall only offer employment to a medical practitioner who is to be appointed as a salaried general practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published by the British Medical Association and the NHS Confederation as item 1..2 of the supplementary documents to the new GMS contract 2003 (this document is available on the Department of Health's website at [www.doh.gov.uk/gmscontract/supportingdocs.htm](http://www.doh.gov.uk/gmscontract/supportingdocs.htm), or a copy may be

obtained by Writing to the NHS Confederation, 1 Warwick Row, London SW1E 5ER).

## **Appraisal and Assessment**

- 20.18 The Contractor shall ensure that any medical practitioner performing Services under this Agreement:
- 20.18.1 participates in an appropriate appraisal system provided by the Board (unless he participates in an appropriate appraisal system provided by another health service body or is an armed forces GP); and
  - 20.18.2 co-operates with the Board in relation to the Board's Patient safety functions.
- 20.19 The Board must provide an appraisal system for the purposes of 20.18.1 after consultation with the Local Medical Committee (if any) which is formed for the area in which the Contractor provides services under this Agreement and with such other persons as appear to it to be appropriate. The Contractor shall provide details of its compliance with this clause to the Board upon request.

## **21 Training**

- 21.1 The Contractor shall ensure that for any Health Care Professional who is:
- 21.1.1 performing clinical services under this Agreement; or
  - 21.1.2 employed or engaged to assist in the performance of the 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.
- 21.2 The Contractor shall afford to each Staff member reasonable opportunities to undertake appropriate training with a view to maintaining that Staff member's competence.

## **22 Arrangements for GP Registrars**

- 22.1 The Contractor shall only employ a GP Registrar subject to the conditions in clause 22.2
- 22.2 The conditions referred to in clause 22.1 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 this Agreement or for which other Staff assist them in the performance of those services.
- 22.3 A Contractor which employs a GP Registrar must offer 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.

## **23 Doctors with Provisional Registration**

- 23.1 The Contractor shall not by reason only of having employed or engaged a person who is provisionally registered under section 15, 15A or 21 of the Medical Act and is acting in the course of his employment in a resident medical capacity in an approved medical practice, reduce the total number of hours in which other Staff assist in the performance of medical services under this Agreement.

## **24 Notification Requirements in respect of Specified Prescribers**

- 24.1 Where:
- 24.1.1 the Contractor employs or engages a person who is a Chiropodist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber whose functions will include prescribing;

- 24.1.2 a party to this Agreement is a person who is a Chiroprapist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber; or
- 24.1.3 the functions of a person who is a Chiroprapist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber and is a person who the Contractor already employs or has already engaged are extended to include prescribing,

the Contractor must notify the Board within the period of seven (7) days beginning with the date on which the Contractor employed or engaged the person, the party to this Agreement (unless immediately before becoming such a party, the person fell under clause 24.1.1) or the person's functions were extended.

24.2 Where:

- 24.2.1 the Contractor ceases to employ or engage a person who is a Chiroprapist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber whose functions will include prescribing in its practice;
- 24.2.2 a party to this Agreement who is a Chiroprapist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber ceases to be a party to this Agreement;
- 24.2.3 the functions of a person who is a Chiroprapist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist

Independent Prescriber or a Supplementary Prescriber and whom the Contractor employs or engages in its practice are changed so that the functions no longer include prescribing in its practice; or

- 24.2.4 the Contractor becomes aware that a person who is a Chiropodist or Podiatrist Independent Prescriber, an Independent Nurse Prescriber, a Pharmacist Independent Prescriber, a Physiotherapist Independent Prescriber or a Supplementary Prescriber whom it employs or engages has been removed or suspended from the Relevant Register,

the Contractor must notify the Board in Writing by the end of the second (2) day after the day when the event occurred.

- 24.3 The Contractor shall provide the following information when it notifies the Board in accordance with clause 24.1:

- 24.3.1 the person's full name;
- 24.3.2 his professional qualifications;
- 24.3.3 his identifying number which appears in the Relevant Register;
- 24.3.4 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;
- 24.3.5 the date on which:
- 24.3.5.1 he was employed or engaged, if applicable;
- 24.3.5.2 he became a party to this Agreement, if applicable; or
- 24.3.5.3 one of his functions became to prescribe.

- 24.4 The Contractor shall provide the following information when it notifies the Board in accordance with clause 24.2:

- 24.4.1 the person's full name;
- 24.4.2 his professional qualifications;
- 24.4.3 his identifying number which appears in the Relevant Register;
- 24.4.4 the date on which:
  - 24.4.4.1 he ceased to be employed or engaged in its Practice;
  - 24.4.4.2 he ceased to be a party to this Agreement;
  - 24.4.4.3 his functions changed so as no longer to include prescribing; or
  - 24.4.4.4 he was removed or suspended from the Relevant Register.

24.5 All prescribing carried out by the Contractor shall comply with the provisions contained in Schedule 4 of this Agreement.

## **25 Signing Of Documents**

25.1 In addition to any other requirements relating to such documents whether in PMS Regulations or otherwise, the Contractor shall ensure:

- 25.1.1 that the documents specified in clause 25.2 include:
  - 25.1.1.1 the clinical profession of the Health Care Professional who signed the document; and
  - 25.1.1.2 the name of the Contractor on whose behalf it is signed; and
- 25.1.2 that the documents specified in clause 25.3 include the clinical profession of the Health Care Professional who signed the document.

25.2 The documents referred to in clause 25.1.1 are:

25.2.1 certificates issued in accordance with clause 26, unless regulations relating to particular certificates provide otherwise; and

25.2.2 any other clinical documents, apart from:

25.2.2.1 Home Oxygen Order Forms; and

25.2.2.2 those documents specified in clause 25.3.

25.3 The documents referred to in clauses 25.1.2 and 25.2.2.2 are Batch Issues, Prescription Forms and Repeatable Prescriptions.

## **26 Certificates**

26.1 If and to the extent that the Contractor performs Essential Services, the Contractor shall issue free of charge to a Patient or his personal representatives any medical certificate of a description prescribed in column 1 of Schedule 3, which is reasonably required under or for the purpose of the enactments specified in relation to the certificate in column 2 of Schedule 3, except where, for the condition to which the certificate relates, the Patient:

26.1.1 is being attended by a medical practitioner who is not:

26.1.1.1 employed or engaged by the Contractor; or

26.1.1.2 a party to this Agreement; or

26.1.1.3 a shareholder in a qualifying body which is a party to this Agreement; or

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

26.2 The exception in clause 26.1 shall not apply where the certificate is issued pursuant to regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976 (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985 (medical information).

- 26.3 In addition to any other requirements relating to such documents whether in this Agreement or otherwise, the Contractor shall ensure that the documents referred to in clause 26.1 above include the clinical profession of the Health Care Professional who signed the document and the name of the Contractor.

## **27 Sub-Contracting of Clinical Matters**

- 27.1 The Contractor shall not sub-contract any of its rights or duties under this Agreement in relation to clinical matters [without the prior written authorisation of the Board and subject to such conditions as the Board may impose. The Contractor shall only seek to sub-contract such rights or duties where] unless it has taken reasonable steps to satisfy itself that:
- 27.1.1 it is reasonable in all the circumstances;
  - 27.1.2 the person is qualified and competent to provide the service; and
  - 27.1.3 it is satisfied that the sub-Contractor holds adequate insurance pursuant to clause 28.2.
- 27.2 Where the Contractor sub-contracts any of its rights or duties under the Agreement in relation to clinical matters, it shall:
- 27.2.1 inform the Board of the proposed sub-contract as soon as is reasonably practicable;
  - 27.2.2 provide the Board with such information in relation to the sub-contract as it reasonably requests;
  - 27.2.3 comply with all directions from the Board regarding its relationship with such sub-Contractor including (without limitation) termination of such sub-contract.
- 27.3 Where the Contractor sub-contracts clinical services under clause 27.1, the parties to the Agreement shall be deemed to have agreed a variation to the Agreement which has the effect of adding to the list of

the Contractor's Premises any premises which are to be used by the sub-Contractor for the purpose of the sub-contract and clause 53.1 shall not apply.

27.4 The Contractor must ensure that any person with whom it sub-contracts is prohibited from sub-contracting the clinical services it has agreed with the Contractor to provide.

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

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

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

27.5.3 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 a 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 the goodwill of a medical practice in section 259 of the 2006 Act or any Regulations made wholly or partly under that section.

27.6 A contract with a sub-contractor must, unless the Board agrees otherwise: be in Writing; contain substantially the same provisions set out in this Agreement; allow the subcontract to terminate if this Agreement terminates without payment of any compensation or damages or, if the Board so elects, to transfer, assign or novate the sub-contract to the Board without any payment of compensation or damages; and prohibit the sub-Contractor from sub-contracting the services it has agreed with the Contractor to provide.

- 27.7 The Contractor shall be responsible for the acts, omissions and defaults of its sub-Contractor in performing the Services as though they were its own acts, omissions and defaults.

## **28 Insurance**

- 28.1 The Contractor shall at all times have in force in relation to it an indemnity arrangement which provides appropriate cover.
- 28.2 The Contractor shall not sub-contract its obligations to provide clinical services under this Agreement unless it has satisfied itself that the sub-Contractor has in force in relation to it an indemnity arrangement which provides appropriate cover.
- 28.3 For the purposes of this clause 28,
- 28.3.1 "indemnity arrangement" means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor;
- 28.3.2 "appropriate cover" means cover against liabilities that may be incurred by the Contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services; and
- 28.3.3 a Contractor shall be regarded as having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to a person employed or engaged by it in connection with clinical services which that person provides under this Agreement or, as the case may be, sub-contract.
- 28.4 The Contractor shall at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with this Agreement which are not covered by an indemnity arrangement referred to in clause 28.1.

## **29 Patient Records**

- 29.1 In clause 29 “computerised records” means records created by way of entries on a computer.
- 29.2 The Contractor shall keep adequate records of its attendance on and treatment of its Patients and shall do so:
- 29.2.1 on forms supplied to it for that purpose by the Board; or
- 29.2.2 with the written consent of the Board, by way of computerised records,
- or in a combination of those two ways.
- 29.3 Patient Records shall be kept in an appropriate secure location. Authorised NHS Parties shall be granted access to such Patient Records and shall be entitled to inspect the Patient Records and require copies to be provided by the Contractor.
- 29.4 The parties shall comply with any duty arising from the Patient’s entitlement to confidentiality of his/her Patient Record and any other information (including Personal Data) relating to him/her as a Patient in accordance with the Human Rights Act 1998, the Data Protection Act legislation, Access to Health Records Act 1990 and the common law duty of confidentiality.
- 29.5 The Contractor shall include in the records referred to in clause 29.2 clinical reports sent in accordance with clause 12.1 or from any other Health Care Professional who has provided clinical services.
- 29.6 The consent of the Board required by clause 29.2.2 shall not be withheld or withdrawn provided the Board is satisfied, and continues to be satisfied, that:
- 29.6.1 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”;

- 29.6.2 the security measures, audit and system management functions incorporated into the computer system as accredited in accordance with clause 29.6.1 have been enabled; and
  - 29.6.3 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 patient records” (Version 4) published on 21st March 2011.
- 29.7 Where a Patient's records are computerised records, the Contractor shall, as soon as possible following a request from the Board, allow the Board to access the information recorded on the computer system on which those records are held by means of the audit function referred to in clause 29.6.2 to the extent necessary for the relevant body to confirm that the audit function is enabled and functioning correctly.
- 29.8 The Contractor shall send the complete records relating to a Patient to the Board:
- 29.8.1 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 Board of the death, or (in any other case) before the end of the period of one (1) month beginning with the date on which it learned of the death, at the request of the Board; or
  - 29.8.2 in any other case where the person is no longer registered with the Contractor, as soon as possible at the request of the Board;
- 29.9 To the extent that a Patient's records are computerised records, the Contractor complies with clause 29.8 if it sends to the Board a copy of those records:
- 29.9.1 in written form; or
  - 29.9.2 with the written consent of the Board in any other form.

- 29.10 The consent of the Board to the transmission of information other than in written form for the purposes of clause 29.9.2 shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters:
- 29.10.1 the Contractor's proposals as to how the record will be transmitted;
  - 29.10.2 the Contractor's proposals as to the format of the transmitted record;
  - 29.10.3 how the Contractor will ensure that the record received by the Board is identical to that transmitted; and
  - 29.10.4 how a written copy of the record can be produced by the Board.
- 29.11 The Contractor whose Patient's records are computerised records shall not disable, or attempt to disable, either the security measures or the audit and system management functions referred to in clause 29.6.2.

## **30 Summary Care Record**

- 30.1 A Contractor which provides Essential Services must, in any case where there is a change to the information included in a Patient's medical record, enable the 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 Board.
- 30.2 The requirement in clause 30.1 does not apply to a Contractor where:
- 30.2.1 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
  - 30.2.2 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.

30.3 In clauses 30.1 to 30.3:

“Summary Care Record” means the system approved by the Board 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; and

“summary information” means items of Patient data that comprise the Summary Care Record.

## **31 Electronic Transfer of Patient Record**

31.1 A Contractor which provides Essential Services must use the facility known as “GP2GP” for the safe and effective transfer of any Patient records:

31.1.1 in a case where a new Patient registers with the Contractor's Practice, to the Contractor's Practice from another provider of primary medical services (if any) with which the Patient was previously registered; or

31.1.2 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.

31.2 The requirement in clause 31.1 does not apply to a Contractor where:

31.2.1 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

31.2.2 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.

- 31.3 In clauses 31.1 to 31.4, “GP2GP facility” means the facility provided by the Board to a Contractor's practice which enables the electronic health records of a Registered Patient which are held on the computerised clinical systems of the Contractor's practice to be transferred securely and directly to another provider of primary medical services with which the Patient has registered.
- 31.4 The requirements of clauses 31.1 to 31.3 do not apply in the case of a Temporary Resident.

## **32 Clinical Correspondence: Requirement for NHS Number**

- 32.1 A 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.
- 32.2 The requirement in clause 32.1 does not apply where, in exceptional circumstances outside of the Contractor's control, it is not possible for the Contractor to ascertain the Patient's NHS number.
- 32.3 In clauses 32.1 to 32.3:
- “clinical correspondence” 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 Practice Premises including referrals made by letter or by any other means; and
- “NHS number”, in relation to a Registered Patient, means the number, consisting of ten (10) numeric digits, which serves as the national unique identifier used for the purpose of safely, efficiently and accurately sharing information relating to that Patient across the whole of the health service in England.

### **33 Patient online services**

33.1 A Contractor which provides Essential Services must promote and offer to its Registered Patients the facility for a Patient:

33.1.1 to book, view, amend, cancel and print appointments online;

33.1.2 to order repeat prescriptions for drugs, medicines or appliances online; and

33.1.3 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's Practice.

33.2 A Contractor must, when complying with the requirement in sub-clause 33.1.1, 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 33.1.1 so as to increase the proportion of appointments which are available for its Registered Patients to book online and, if so, take such action.

33.3 A 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:

33.3.1 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

33.3.2 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.

33.4 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:

33.4.1 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:

33.4.1.1 to the Patient's physical or mental health, or

33.4.1.2 to the physical or mental health of any other person;

33.4.2 the information includes a reference to any third party who has not consented to its disclosure; or

33.4.3 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.

33.5 Where the Contractor has a Practice website, the Contractor must also promote and offer to its Registered Patients the facility referred to in clauses 33.1.1 and 33.1.2 on that Practice website.

33.6 The requirements in clause 33.1 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 33.1 to its Registered Patients.

33.7 The requirements in clause 33.3:

33.7.1 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 that clause 33.3; and

33.7.2 only apply until such time as the Contractor is able to fully comply with the requirements in clause 33.4.

33.8 The requirements in clause 33.4 do not apply where:

33.8.1 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

33.8.2 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.

33.9 In clauses 33.1 to 33.8:

33.9.1 “GPSOC accredited computer systems and software” 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<sup>5</sup>;

33.9.2 “summary information” has the meaning given in clause 30.3.

## **34 Personal Data**

34.1 The Contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of Personal Data held by it.

34.2 The Contractor shall comply fully in all respects with the provisions of the Data Protection Act 1998.

34.3 The Contractor shall have regard to the provisions of the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Provider Medical Services Code of Practice (as amended or reissued from time to time).

34.4 The Contractor shall in providing the Services:

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<sup>5</sup> GP Systems of Choice is a scheme by which the National Health Service funds the cost of GP clinical IT systems in England. Guidance about this scheme is available from the Health and Social Care Information Centre, 1 Trevelyan Square, Boar Lane, Leeds, LS1 6AE.

- 34.4.1      comply with the Confidentiality Code of Practice for NHS Staff;
- 34.4.2      comply with Protecting and Using Patient Information (a Manual for Caldicott Guardians);
- 34.4.3      appoint a senior clinician to perform the role of Caldicott Guardian and make available on request the name and contact details of the Caldicott Guardian to the Board;
- 34.4.4      comply with the NHS Information Governance Toolkit (as such term is understood in the NHS from time to time, and to the extent that it applies to the Contractor); and
- 34.4.5      comply with the security management standard BS 7799-2.

## **35      Practice Leaflet**

- 35.1      The Contractor providing Essential Services shall compile a document (a “practice leaflet”) which shall include the information specified in Schedule 12.
- 35.2      The Contractor shall review its practice leaflet at least once in every period of twelve (12) months and make any amendments necessary to maintain its accuracy; and
- 35.3      The Contractor shall make available a copy of the leaflet, and any subsequent updates, to its Patients and prospective patients.

## **36      Friends and Family Test**

- 36.1      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.
- 36.2      The Contractor must:
  - 36.2.1      report the results of completed Friends and Family Tests to the Board; and

36.2.2 publish the results of such completed Tests<sup>6</sup>,  
in the manner approved by the Board.

36.3 In this clause 36, “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.

## **37 Provision of Information on Website**

37.1 Where the Contractor has a website, the Contractor must publish on that website details of the Practice Area, including the area known as the outer boundary area (specified in Schedule 5 paragraph 2.2), by reference to a sketch diagram, plan or postcode.

## **38 Provision of Information**

38.1 The Contractor must, at the request of the Board, produce to the Board or to a person authorised in Writing by the Board or allow it, or a person authorised in Writing by it, to access, on request:

38.1.1 any information which is reasonably required by the Board for the purposes of or in connection with this Agreement [including (without limitation) any financial information relating to the Contractor]; and

38.1.2 any other information which is reasonably required by it in connection with the Board's functions.

38.2 The Contractor is not required to comply with any request made in accordance with clause 38.1 unless it has been made by the Board in accordance with directions made by the Secretary of State under

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<sup>6</sup> See pages 7 and 8 of the full Guidance for GP Practices on the Friends and Family Test in respect of the requirement on GP practices to submit monthly reports to the Board and to publish the results of completed tests. This guidance is available at <http://www.england.nhs.uk/ourwork/pe/fft/fft-guidance/>. Hard copies of this guidance are available from Primary Care Contracting, NHS Employers, 50 Broadway, London SW1H 0DB.

section 98A (exercise of functions) of the 2006 Act relating to the provision of information by Contractors.

38.3 The Contractor shall produce the information requested, or, as the case may be, allow access to it:

38.3.1 by such date as has been agreed as reasonable between the Contractor and the Board; or

38.3.2 in the absence of such agreement, within twenty eight (28) days of the request being made.

**Publication of earnings information**

38.4 The Contractor must publish each year on its practice website (if it has one) the information specified in clause 38.5.

38.5 **The information specified in this sub-paragraph is:**

38.5.1 the mean net earnings in respect of the previous financial year of:

38.5.1.1 all general medical practitioners who were party to the agreement for a period of at least six months during that financial year; and

38.5.1.2 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

38.5.2 the:

38.5.2.1 total number of any general medical practitioners to whom the earnings information referred to in clause 38.5.1 relates, and

38.5.2.2 (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.

38.6 The information specified in clause 38.5.2 must be:

38.6.1 published by the Contractor before the end of the financial year following the financial year to which that information relates; and

38.6.2 made available by the Contractor in hard copy form on request.

38.7 For the purposes of clauses 38.4 to 38.6, "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.

## **39 Provision of Information to a Medical Officer etc.**

39.1 The Contractor must, if satisfied that the Patient consents:

39.1.1 supply in Writing to any person specified in clause 39.3, within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in clauses 39.3.1 to 39.3.4 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

- 39.1.2 answer any inquiries by any person mentioned in clause 39.3 about:
  - 39.1.2.1 a Prescription Form or medical certificate issued or created by, or on behalf of, the Contractor, or
  - 39.1.2.2 any statement which the Contractor or a person acting on behalf of the Contractor has made in a report.
- 39.2 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 39.3 that the consent of the Patient has been obtained, unless the Contractor has reason to believe that the Patient does not consent.
- 39.3 For the purposes of clauses 39.1 and 39.2, the persons are:
  - 39.3.1 a medical officer;
  - 39.3.2 a nursing officer;
  - 39.3.3 an occupational therapist;
  - 39.3.4 a physiotherapist; or
  - 39.3.5 an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in clauses 39.3.1 to 39.3.4.
- 39.4 In clauses 39.1 to 39.3:
  - 39.4.1 “medical officer” means a medical practitioner who is:
    - 39.4.1.1 employed or engaged by the Department for Work and Pensions, or
    - 39.4.1.2 provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
  - 39.4.2 “nursing officer” means a Health Care Professional who is registered on the Nursing and Midwifery Register and:

- 39.4.2.1 employed or engaged by the Department for Work and Pensions, or
  - 39.4.2.2 provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- 39.4.3 “occupational therapist” means 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:
  - 39.4.3.1 employed or engaged by the Department for Work and Pensions, or
  - 39.4.3.2 provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and
- 39.4.4 “physiotherapist” means 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:
  - 39.4.4.1 employed or engaged by the Department for Work and Pensions, or
  - 39.4.4.2 provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.

## **40 Annual Return and Review**

- 40.1 The Contractor shall submit within twenty eight (28) days of receiving a request or such other reasonable period as the Contractor and the Board shall agree an annual return relating to this Agreement to the Board which shall require the same categories of information from all

persons who hold agreements with it. The Contractor shall submit the annual return using the electronic practice self-declaration system (eDEC) or such system as notified by the Board to the Contractor from time to time.

- 40.2 The Board may require one such annual return at any time during each period of twelve (12) months ending on 31 March in relation to such period (not including any period covered by a previous annual return) as the Board may specify.
- 40.3 Following the Board's receipt of the annual return required under clause 40.1, the Board shall arrange with the Contractor an annual review of its performance under this Agreement.
- 40.4 The Board shall prepare a draft record of the annual review required under clause 40.3 for comment by the Contractor and, having regard to such comments, shall produce a final written record of the annual review which shall be sent to the Contractor.

## **41 Notifications to the Board**

- 41.1 In addition to any requirements of notification elsewhere in this Agreement, the Contractor shall notify the Board 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 this Agreement;
  - 41.1.2 any circumstances which give rise to the Board's right to terminate this Agreement under clauses 60 or 61;
  - 41.1.3 any appointments system which it proposes to operate and the proposed discontinuance of any such system;
  - 41.1.4 any change of which it is aware to the address of a Registered Patient;
  - 41.1.5 the death of any Patient of which it is aware.

- 41.2 Where the Contractor is a limited company, it shall give notice in Writing to the Board forthwith when:
- 41.2.1 any share in the Contractor is transmitted or transferred (whether legally or beneficially) to another person on a date after this Agreement has been entered into;
  - 41.2.2 a new director or company secretary is appointed;
  - 41.2.3 it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;
  - 41.2.4 circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;
  - 41.2.5 circumstances arise which would enable the court to make a winding up order in respect of the Contractor; or
  - 41.2.6 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 41.3 A notice under clause 41.2.1 shall confirm that 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 (g) of the 2006 Act; and
  - 41.3.2 meets the further conditions imposed on shareholders by virtue of Regulation 5 of the PMS Regulations.
- 41.4 A notice under clause 41.2.2 shall confirm that the new director or, as the case may be, company secretary, meets the conditions imposed on directories and company secretaries by virtue of Regulation 5 of the PMS Regulations.
- 41.5 The parties acknowledge this clause reflects the relevant requirements of the PMS Regulations to the fullest extent relevant to the Contractor. Where any shareholder does not fall within either clause 41.3.1 or

41.3.2 above, the Board shall have the right to serve notice to terminate this Agreement.

41.6 Where the Contractor is an individual or a number of individuals and/or persons in partnership, it shall give notice in Writing forthwith to the Board upon:

41.6.1 the occurrence of any event of bankruptcy, including (without limitation) making an arrangement or composition with its creditors or enters in to an Individual Voluntary Arrangement or upon the occurrence of any other event which is analogous to those described in clauses 41.2.2, 41.2.3, 41.2.4 or 41.2.5;

41.6.2 the death of a partner in a partnership;

41.6.3 the leaving of the partnership of any partner; or

41.6.4 the joining to the partnership of any partner.

41.7 Without prejudice to its rights under clause 60 of the Agreement and the requirements of clause 53, upon the occurrence of the events described in clause 41.6, the Board may:

41.7.1 in the case of that described in clause 41.6.1 serve notice to terminate the Agreement;

41.7.2 in the case of those described in clauses 41.6.2 and 41.6.3, serve notice to terminate the Agreement where the Board acting reasonably is satisfied that Patient safety might be compromised or the delivery of the Services to Patients significantly adversely affected;

41.7.3 in the case of that described in clause 41.6.4 require the new partner(s) to enter into a deed of adherence to this Agreement in a form specified by the Board, save that if the new partner is not a person to whom section 93 of the 2006 Act applies, the Board may serve notice to terminate the Agreement.

## **42 Notification of Deaths**

42.1 The Contractor shall report in Writing to the Board the death on its Premises of any Patient no later than the end of the first (1) Business 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 the medical practitioner or any other person treating the Patient whilst on the Premises; and
- 42.1.6 the name, where known, of any other person who was present at the time of the death.

## **43 Notifications to Patients following variation of this Agreement**

43.1 Where this Agreement is varied in accordance with clauses 53 or clauses 56 to 68 and, as a result of that variation:

- 43.1.1 there is to be a change in the range of services provided to the Contractor's Registered Patients; or
- 43.1.2 Patients who are on the Contractor's List of Patients are to be removed from that list,

the Board, 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).

## **44 Entry and Inspection by the Board**

44.1 Subject to clause 44.2 the Contractor shall allow persons authorised in Writing by the Board to enter and inspect the Premises at any time.

44.2 The conditions referred to in clause 44.1 are that:

44.2.1 reasonable notice of the intended entry has been given;

44.2.2 written evidence of the authority of the person seeking entry is produced to the Contractor on request; and

44.2.3 entry is not made to any Premises or part of the Premises used as residential accommodation without the consent of the resident.

## **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 Premises in accordance with section 239 of the 2006 Act.

## **46 Entry and viewing by Local Healthwatch organisations**

46.1 The Contractor must comply with the requirement to allow an authorised representative to enter and view premises and observe the carrying-on of activities on those premises in accordance with regulations made under section 225 (duties of services-providers to allow entry by Local Healthwatch organisations or contractors) of the Local Government and Public Involvement Health Act 2007.

## **47 Counter Fraud and Security Management**

47.1 Upon the request of the Board 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:

47.1.1 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 this Agreement;

47.1.2 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 connected to this Agreement.

47.2 The Contractor shall put in place appropriate arrangements to ensure the security of Patients whilst in the Premises; and for the prevention and detection of fraud by or in relation to Patients and/or in relation to public funds.

47.3 The Contractor shall, on request by the Board, permit the Board 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 47.2.

47.4 The Contractor shall, on request by the Board permit:

47.4.1 the Local Counter Fraud Specialist ("LCFS") of the Board;

47.4.2 a person duly authorised to act on the LCSF's behalf; or

47.4.3 a person duly authorised to act on the behalf of the NHS CFSMS,

to review the arrangements put in place by the Contractor pursuant to clause 47.2 and make such changes as a person described in clause 47.4.1 to 47.4.3 may reasonably require.

47.5 The Contractor shall promptly upon becoming aware of any suspected fraud or corruption involving Patients' or public funds, report such matter to the LCFS of the Board and/or the NHS CFSMS.

- 47.6 The provisions of clauses 47.1 and 47.5 shall continue following termination of this Agreement for any reason whatsoever and without limit in time.

## **48 Payment**

- 48.1 Subject to clauses 48.2 and 48.3 the Board shall pay the Contractor for all Services delivered under this Agreement at the rate set out in Schedule 2 on the [15th]<sup>7</sup> day of every Contract Month (such Contract Month being the same Contract Month as that in which the Services being paid for by the Board are being performed by the Contractor) during the term of this Agreement in accordance with the provisions of this Agreement and any other conditions relating to payment contained in direction given by the Secretary of State under section 8 or section 94(4), 109(4) or s.273(1) or (4) of the 2006 Act, and each such payment shall be one twelfth of the then current Annual Contract Value. For the avoidance of doubt no further or other payments shall be due to the Contractor other than those expressed in Schedule 2.
- 48.2 The Annual Contract Value will be reviewed by the Board on an annual basis to consider whether any uplift will be applied (at the Board's complete discretion). Where the Board determine that an uplift will be applied, the Parties may agree a variation in accordance with clause 53.1 to increase the Annual Contract Value accordingly and to take effect on 1st April of the Contract Year.
- 48.3 Where the cost of performing the Services increases because of a Change in Law, the Contractor may request the Board consider an increase to the Annual Contract Value. Where the Board, at its complete discretion, agrees to an increase, the Parties may agree a variation to the Annual Contract Value in accordance with clause 53.1.
- 48.4 The Board's obligation under clause 48.1 is subject to the rights of the Board under this clause 48.4 to set off against any amount payable to the Contractor pursuant to this Agreement any amount:

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<sup>7</sup> For local determination

- 48.4.1 owed by the Contractor to the Board under this Agreement including (without limitation) any sums paid in error by the Board to the Contractor; or
  - 48.4.2 that the Board may withhold from the Contractor in accordance with the provisions of this Agreement; or
  - 48.4.3 that the Board may withhold in accordance with any other applicable provisions contained in the directions given by the Secretary of State pursuant to the 2006 Act.
- 48.5 If, pursuant to directions made under section 98A of the 2006 Act, the Board is required to make a payment to the Contractor pursuant to this Agreement subject to conditions, then such conditions shall be a term of this Agreement.
- 48.6 Payment of any undisputed invoice raised by the Contractor pursuant to this Agreement for sums over and above the Annual Contract Value shall be made by the Board within [thirty (30) days] from the date of such invoice.
- 48.7 Payment is exclusive of any applicable VAT for which the Board shall be additionally liable to pay the Contractor upon receipt of a valid tax invoice at the prevailing rate in force from time to time.
- 48.8 If either party (acting in good faith) disputes all or any part of payments calculated in accordance with clause 48.1 or 48.6, the undisputed amount of the payment shall be paid by the Board and the provisions of this clause 48.8 shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within thirty (30) Business Days of the dispute arising. If they fail so to resolve it, either party may refer the matter for determination in accordance with Schedule 6. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the Board to the Contractor.
- 48.9 The Contractor shall be entitled, without prejudice, to any other right or remedy, to receive interest on any payment not duly made pursuant to

the terms of this Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

- 48.10 The payments that shall be made by the Board to the Contractor under this Agreement shall be limited to those specifically expressed to be due and payable by the Board to the Contractor pursuant to Schedule 2 and the Board shall not be liable to pay any further or other sums to or in consequence of the Board and the Contractor entering into the Agreement including (without limitation) SFE payments, QOF payments or any payments in respect of superannuation or the wider NHS Pension Scheme and associated or any further or other benefits of any type whatsoever.

**[Local Medical Committee Levies]**

- 48.11 The Contractor shall prior to the Commencement Date, provide the Board with a list of medical practitioners who are performing Services under this Agreement and who wish to be represented by the Local Medical Committee for the area of the Contractor pursuant to the provisions of section 97 of the Act and unless the Board has received written notice to the contrary from any individual medical practitioner, those medical practitioners will have been deemed to have given notice to the Board of their wish to be represented by the Local Medical Committee.
- 48.12 Any practitioner who is added as a party to this Agreement or who is subsequently engaged by the Contractor as a performer of Services under this Agreement shall be deemed (unless written notice to the contrary has been given to the Board by any individual medical practitioner) to have notified the Board of their wish to be represented by the Local Medical Committee.
- 48.13 The Parties agree that in respect of each medical practitioner referred to in clauses 48.11 and 48.12, the Board shall on a monthly basis deduct the sums specified in Schedule 2 from the monthly sum payable to the

Contractor pursuant to clause 48.1. The sums specified in Schedule 2 shall be reviewed annually and any agreed variations shall be agreed in Writing between the Parties in accordance with clause 53.1.

- 48.14 Subject to data protection legislation, the Parties agree that the Board shall on a quarterly basis, provide to the Local Medical Committee an up to date list of those medical practitioners who by operation of clauses 48.11 and 48.12, are deemed to have notified the Board that they wish to be represented by the Local Medical Committee.]]<sup>8</sup>

## **49 Limitation of Liability**

- 49.1 Nothing in this Agreement shall in any way exclude or limit either party's liability for death or personal injury caused by the defaulting party's negligence or for fraudulent misrepresentation.

## **50 Indemnity**

- 50.1 The Contractor shall indemnify the Board 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 Agreement of the Contractor, its staff, agents or sub-Contractors save to the extent that the same was caused by any negligent act of the Board or its servants.

## **51 Complaints**

- 51.1 The Contractor shall comply with the provisions set out in Schedule 8 (Complaints Requirements) in respect of matters reasonably connected with the provision of the Services under the Agreement and relating to its own complaint procedure (the "Contractor Complaints Procedure").
- 51.2 The Complaints Requirements and the Contractor Complaints Procedure shall comply with the requirements of the Local Authority

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<sup>8</sup> Include if LMC levies are to be deducted in this manner

Social Services and National Health Service Complaints (England) Regulations 2009, as amended.

51.3 The Contractor shall nominate:

51.3.1 a person responsible for the operation of the Contractor Complaints Procedure and the investigation of complaints (the “Complaints Officer”); and

51.3.2 a senior person responsible for the effective management of the complaints procedure and for ensuring action is taken in light of the outcome of any investigation (the “Complaints Manager”).

51.4 Provided the Board is notified of the change as soon as reasonably practicable after the change, the Contractor may change the Complaints Officer and Complaints Manager from time to time.

## **52 Co-operation with Investigations**

52.1 Contractor shall co-operate with any investigation of a Complaint in relation to any matter reasonably connected with the provision of the Services by the Contractor undertaken by:

52.1.1 the Board; and

52.1.2 the Health Service Commissioner.

52.2 The Contractor shall co-operate with any investigation of a complaint by an NHS body or local authority which relates to a Patient or former Patient of the Contractor.

52.3 In clauses 52.1 to 52.2:

52.3.1 “NHS body” means the Board, a CCG (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a Local Health Board, a Health Board, a Health and Social Services Board or a Health and Social Services Trust; and

52.3.2 "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

52.3.3 "Health Service Commissioner" means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993.

52.4 In co-operating with any investigation, the Contractor shall, by way of example:

52.4.1 answer questions reasonably put to the Contractor by the Board;

52.4.2 provide any information relating to the complaint reasonably required by the Board; and

52.4.3 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 Board.

## **53 Variation of this Agreement**

53.1 Subject to clauses 54.2, 27.3 and 66, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Board and the Contractor.

53.2 In addition to the specific provisions of clause 66 the Board may vary this Agreement without the Contractor's consent so as to comply with the 2006 Act, any regulations made pursuant to that Act, any direction given by the Secretary of State pursuant to that Act, any other requirement of the NHS or in compliance with the interests of Patient safety where it:

- 53.2.1 is reasonably satisfied that it is necessary to vary this Agreement in order so to comply with the 2006 Act, any regulations made pursuant to that Act, any direction given by the Secretary of State pursuant to that Act; and
- 53.2.2 notifies the Contractor in Writing of the wording of the proposed variation and the date upon which that variation is to take effect. In doing so, where reasonably practicable it will seek to consult with practices via the LMC about how such changes to the Agreement are implemented.

53.3 Where it is reasonably practicable to do so, the date that the proposed variation under clause 53.2.2 is to take effect shall be not less than fourteen (14) days after the date on which the notice under clause 53.2.2 is served on the Contractor.

53.4 Where this Agreement is varied in accordance with this clause 53 and, as a result of that variation:

53.4.1 there is to be a change in the range of services provided to the Contractor's Patients; or

53.4.2 Patients who are on the Contractor's List of Patients are to be removed from that list,

the Board 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).

## **54 Registered Patients from outside Practice Area: variation of contractual terms**

54.1 A Contractor may, on or after 1st October 2014, accept onto its List of Patients a person who resides outside of the area referred as the Contractor's "Practice Area".

- 54.2 Subject to clauses 54.5 and 54.6, the terms of the Contractor's agreement specified in clause 54.3 must be varied so as to require the Contractor to provide to the person any services which the Contractor is required to provide to its Registered Patients under this Agreement as if the person resided within the Contractor's Practice Area.
- 54.3 The terms of this Agreement specified in this clause 54.
- 54.3.1 the terms which require the Contractor to provide Essential Services and any other service;
- 54.3.2 the terms which require the Contractor to provide Out of Hours Services to Patients to whom it provides Essential Services; and
- 54.3.3 the terms contained in clauses 7.2, 7.3, 7.8, 7.10.1 and paragraph 7.2 of Schedule 5.
- 54.4 Where, under clause 54.1, a Contractor accepts onto its List of Patients a person who resides outside of the Contractor's Practice Area and the Contractor subsequently considers that it is not clinically appropriate or practical to continue to provide that Patient with services in accordance with the terms specified in clause 54.3, or to comply with those terms, the agreement must be varied so as to include a term which has the effect of modifying the application of paragraph 10 of Schedule 5 (which relates to the removal of a patient from the list at the Contractor's request) in relation to that patient so that:
- 54.4.1 in paragraph 10.1, the reference to the patient's disability or medical condition is removed; and
- 54.4.2 paragraph 10.3 applies as if, after sub-paragraph 10.3.2, there were inserted the following new sub-paragraph:
- 54.4.2.1 "the reason for the removal is that the Contractor considers that it is not clinically appropriate or practical to continue to provide Services under the Agreement to the Patient

which do not include the provision of such Services at the Patient's home address”.

54.5 Where the Contractor is required to provide services to a Patient in accordance with arrangements made clause 54.1, this Agreement must also be varied so as to include terms which have the effect of releasing the Contractor and the Board from all obligations, rights and liabilities relating to the terms specified in clause 54.3 (including any right to enforce those terms) where, in the opinion of the Contractor, it is not clinically appropriate or practical under those arrangements:

54.5.1 to provide the services or access to services in accordance with those terms; or

54.5.2 to comply with those terms.

54.6 This Agreement must also include a term which has the effect of requiring the Contractor to notify a person in Writing, where the Contractor is minded to accept that person on its List of Patients in accordance with arrangements made under clause 54.1, that the Contractor is under no obligation to provide:

54.6.1 Essential Services, and any other service in Core Hours, if, at the time treatment is required, it is not clinically appropriate or practical to provide primary medical services given the particular circumstances of the Patient; or

54.6.2 Out of Hours Services if, at the time treatment is required, it is not clinically appropriate or practical to provide such services given the particular circumstances of the Patient.

## **55 Saving in respect of the Patient Choice Extension Scheme**

55.1 Where, before 1st April 2014:

55.1.1 a Patient is included in a Contractor's List of Patients pursuant to arrangements entered into by the Contractor

and the Board under the Patient Choice Extension Scheme; and

55.1.2 the terms of the Contractor's Agreement were varied pursuant to the provisions of clause 54 as it had effect immediately before that date,

the Patient may remain registered with the Contractor's Practice and any variation to the Contractor's Agreement 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.

55.2 Paragraph (6) of regulation 18B of the PMS Regulations, as it had effect immediately before 1st April 2014, continues to have effect in relation to an agreement where, before that date, a Contractor entered into arrangements with the Board under the Patient Choice Extension Scheme.

## **56 Common Rights of Termination**

56.1 The Board and the Contractor may agree in Writing to terminate this Agreement, and if the Parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which this Agreement should be terminated.

56.2 Without prejudice to any other term of this Agreement, the Board or the Contractor may terminate this Agreement at any time on [six (6) months]<sup>9</sup> notice by serving a notice in Writing on the other party.

## **57 Termination on Death**

57.1 Where this Agreement is with a single individual and that individual dies, this Agreement 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 Board has agreed in Writing with the Contractor's personal

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<sup>9</sup> For local determination but must be a minimum of 6 months.

representatives that this Agreement should continue for a further period, not exceeding twenty eight (28) days after the end of the period of seven (7) days.

- 57.2 Clause 57.1 does not affect any other rights to terminate this Agreement which the Board may have under clauses 60 to 64.

## **58 Termination by Serving Notice**

- 58.1 The Contractor or the Board may terminate this Agreement by serving notice in Writing on the other party at any time.
- 58.2 Where a notice is served pursuant to clause 58.1 and the period of notice in relation to such termination (which must be a period of not less than six (6) months) has previously been agreed between the parties and provided for in this Agreement, the date of termination under the notice must be calculated in accordance with such agreed period of notice, and this Agreement will terminate on the date so calculated.
- 58.3 Where a notice is served pursuant to clause 58.1 and no period of notice has previously been agreed between the parties and provided for in this Agreement in relation to such termination, the period of notice required must be six (6) months and the date of termination under the notice must be calculated accordingly, and this Agreement will terminate on the date so calculated.
- 58.4 This clause 58 is without prejudice to any other rights to terminate this Agreement which the Contractor and the Board may have.

## **59 Late Payment Notices**

- 59.1 The Contractor may give notice in Writing (a “**Late Payment Notice**”) to the Board if the Board has failed to make any payments properly due to the Contractor in accordance with clause 48 of this Agreement and no notice disputing the invoice has been given pursuant to this Agreement following the Contractor having served notice upon the Board in accordance with the provision of clause and the Contractor shall specify

in the Late Payment Notice the payments that the Board has failed to make in accordance with clause 48.

59.2 Subject to clause 59.3 below, the Contractor may, at least twenty eight (28) days after having served a Late Payment Notice, terminate this Agreement by a further written notice if the Board has still failed to make payments properly due to the Contractor, and that were specified in the Late Payment Notice served on the Board pursuant to clause 59.1.

59.3 If, following receipt of a Late Payment Notice, the Board refers the matter to the NHS Dispute Resolution Procedure 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 this Agreement pursuant to clause 59.2 until:

59.3.1 there has been a determination of the dispute pursuant to Schedule 6 and that determination permits the Contractor to terminate this Agreement; or

59.3.2 the Board ceases to pursue the NHS Dispute Resolution Procedure,

whichever is the sooner.

59.4 Clauses 59.1 to 59.3 are without prejudice to any other rights to terminate this Agreement that the Contractor may have.

## **60 Termination by the Board for the provision of untrue etc. information**

60.1 The Board may only terminate this Agreement in accordance with the provisions of this Agreement.

60.2 The Board may serve notice in Writing on the Contractor terminating this Agreement forthwith, or from such a date as may be specified in the notice if, after this Agreement has been entered into, it comes to the

attention of the Board that written information provided to the Board by the Contractor:

60.2.1 before this Agreement was entered into; or

60.2.2 pursuant to clauses 41.3 or 41.4,

in relation to the conditions set out in regulation 5 of the PMS Regulations was, when given, untrue or inaccurate in a material respect.

## **61 Termination by the Board on Fitness Grounds**

61.1 The Board may serve notice in Writing on the Contractor terminating this Agreement forthwith, or from such date as may be specified in the notice if:

61.1.1 in the case of an agreement with an individual as a party, that individual; or

61.1.2 in the case of an agreement with the Contractor any person who both legally and beneficially owns a share in the Contractor or any director or secretary of the Contractor,

falls within any part of clause 61.3 during the existence of this Agreement or, if later, on or after the date of which a notice in respect of his compliance with the conditions in regulation 5 of the PMS Regulations was given under clauses 41.3 or 41.4.

61.2 In the case of a person who is party to an agreement made before 1st April 2004 and which is deemed to be an agreement made under section 83 or 99 of the 2006 Act, the reference to “during the existence of the agreement” shall be read as excluding any period before 1st April 2004.

61.3 A person falls within this clause 61.3 if:

61.3.1 he or it (in the case of the Contractor) is the subject of a National Disqualification;

- 61.3.2 subject to clause 61.4, 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;
- 61.3.3 subject to clause 61.5, he has been dismissed (otherwise than by reason of redundancy) from any employment by a Health Service Body unless before the Board has served a notice terminating this Agreement pursuant to this clause 61, he is employed by the Health Service Body that dismissed him or by another Health Service Body;
- 61.3.4 he or it is removed from, or refused admission to, a Primary Care List by reason of inefficiency, fraud or unsuitability pursuant to sections 151(2), (3) or (4) of the 2006 Act respectively unless his or its name has subsequently been included in such a list;
- 61.3.5 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;
- 61.3.6 he has been convicted in the United Kingdom of a criminal offence and has been sentenced to a term of imprisonment of over six (6) months;
- 61.3.7 subject to clause 61.6, he has been convicted elsewhere of an offence which would, if committed in England and Wales:
- 61.3.7.1 constitute murder; or
  - 61.3.7.2 constitute a criminal offence other than murder, and he has been sentenced to a term of imprisonment of over six (6) months;
- 61.3.8 he or it has:

- 61.3.8.1      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 7A of the Insolvency Act 1986) applies unless he has been discharged from the bankruptcy or the sequestration or the bankruptcy order has been annulled;
- 61.3.8.2      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;
- 61.3.8.3      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;
- 61.3.8.4      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;
- 61.3.8.5      had an administrator, administrative receiver or receiver appointed in respect of it or over any part of its business, undertaking, property or assets;
- 61.3.8.6      had an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986; or

61.3.8.7      been wound up under Part IV of the  
Insolvency Act 1986;

61.3.9      he has been:

61.3.9.1      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;

61.3.9.2      removed under section 34 of Charities and  
Trustee Investment (Scotland) Act 2005, from  
being concerned in the management or  
control of any body;

61.3.10      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

61.3.11      he has refused to comply with a request by the Board for  
him to be medically examined on the grounds that it is  
concerned that he is incapable of adequately providing  
services under this Agreement.

61.4      The Board shall not terminate this Agreement pursuant clause 61.3.2  
where the Board is satisfied that the disqualification or suspension  
imposed by a licensing body outside the United Kingdom does not  
make the person unsuitable to be:

61.4.1      a party to the agreement;

61.4.2      in the case of an agreement with a qualifying body:

61.4.2.1 a person both legally and beneficially owning  
a share in the qualifying body, or

61.4.2.2 a director or secretary of the qualifying body,

as the case may be.

61.5 The Board shall not terminate this Agreement pursuant to clause 61.3.3:

61.5.1 until a period of at least three (3) months has elapsed since  
the date of the dismissal of the person concerned; or

61.5.2 if, during the period of time specified in clause 61.5.1, 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,

and the Board may only terminate this Agreement at the end of the  
period specified in clause 61.5.2 if there is no finding of unfair dismissal  
at the end of those proceedings.

61.6 The Board shall not terminate this Agreement pursuant to clause 61.3.7  
where the Board is satisfied that the conviction does not make the  
person unsuitable to be:

61.6.1 a party to this Agreement; or

61.6.2 in the case of an agreement with the Contractor:

61.6.2.1 a person both legally and beneficially owning  
a share in the Contractor, or

61.6.2.2 a director or company secretary of the  
Contractor,

as the case may be.

61.7 Clause 61 does not affect any other rights to terminate the Agreement  
which the Board may have under this Agreement.

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

62.1 The Board may serve notice in Writing on the Contractor terminating this Agreement forthwith or with effect from such a date as may be specified in the notice if:

62.1.1 the Contractor has breached this Agreement and the Board considers that as a result of that breach, the safety of the Contractor's Patients is at serious risk if this Agreement is not terminated; or

62.1.2 the Contractor's financial situation is such that the Board considers that the Board is at risk of material financial loss.

## **63 Termination by the Board for Unlawful Sub-Contracting**

63.1 If the Contractor breaches the condition specified in clause 27.5 and it comes to the Board's attention that the Contractor has done so, the Board shall serve notice in Writing on the Contractor:

63.1.1 terminating this Agreement forthwith; or

63.1.2 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 Board shall serve a notice in Writing on the Contractor terminating this Agreement forthwith.

## **64 Termination by the Board: Remedial Notices and Breach Notices**

64.1 Where the Contractor has breached this Agreement other than as specified in clauses 60 to 63 and the breach is capable of remedy, the Board shall, before taking any action it is otherwise entitled to take by virtue of this Agreement, serve a Remedial Notice on the Contractor requiring it to remedy the breach.

64.2 A Remedial Notice shall specify:

- 64.2.1 details of the breach;
  - 64.2.2 the steps the Contractor must take to the satisfaction of the Board in order to remedy the breach; and
  - 64.2.3 the period during which the steps must be taken (“the Remedial Notice Period”).
- 64.3 The Remedial Notice Period shall, unless the Board 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 the Remedial Notice is served.
- 64.4 Where the Board is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the Remedial Notice Period, the Board may terminate this Agreement with effect from such date as the Board may specify in a further notice to the Contractor.
- 64.5 Where a Contractor has breached this Agreement other than as specified in clauses 60 to 63 and the breach is not capable of remedy, the Board may serve a Breach Notice on the Contractor requiring the Contractor not to repeat the breach.
- 64.6 If, following a Breach Notice or a Remedial Notice, the Contractor:
- 64.6.1 repeats the breach that was the subject of the Breach Notice or the Remedial Notice; or
  - 64.6.2 otherwise breaches this Agreement resulting in either a Remedial Notice or a further Breach Notice,
- the Board may serve notice on the Contractor terminating this Agreement with effect from such date as may be specified in that notice.
- 64.7 The Board shall not exercise its right to terminate this Agreement under clause 64.6 unless it is satisfied that the cumulative effect of the breaches is such that the Board considers that to allow this Agreement to continue would be prejudicial to the efficiency of the services to be provided under this Agreement.

- 64.8 If the Contractor is in breach of any obligation and a Breach Notice or a Remedial Notice in respect of that default has been given to the Contractor, the Board may withhold or deduct monies which would otherwise be payable under this Agreement in respect of that obligation which is the subject of the default.

## **65 Termination by the Board: Additional Provisions**

- 65.1 If the Board becomes aware that the Contractor is carrying on any business which the Board considers to be detrimental to the Contractor's performance of its obligations under this Agreement:
- 65.1.1 the Board shall be entitled to give notice to the Contractor requiring that the Contractor ceases carrying on that business before the end of a period of not less than twenty eight (28) days beginning on the day on which the notice is served (the "Notice Period"); and
  - 65.1.2 if the Contractor has not satisfied the Board that it has ceased carrying on that business by the end of the Notice Period, the Board may, by a further written notice, terminate this Agreement forthwith or from such date as may be specified in the notice.

## **66 Agreement Sanctions**

- 66.1 In clauses 66 and 67 "Agreement Sanction" means:
- 66.1.1 termination of specified reciprocal obligations in this Agreement;
  - 66.1.2 suspension of specified reciprocal obligations in this Agreement for a period of up to six (6) months; or
  - 66.1.3 withholding or deducting monies otherwise payable under the Agreement.
- 66.2 Where the Board is entitled to terminate this Agreement pursuant to clauses 60, 61, 62, 64.4, 64.6 and 65, then it may instead impose any of

the Agreement Sanctions if the Board is reasonably satisfied (in the Board's absolute discretion) that the Agreement Sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Board's entitlement to terminate this Agreement.

66.3 If the Board decides to impose an Agreement Sanction, it must notify the Contractor of the Agreement Sanction that it proposes to impose, the date upon which that Agreement Sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that Agreement Sanction.

66.4 Subject to clause 67, the Board shall not impose the Agreement Sanction until at least twenty eight (28) days after it has served notice on the Contractor in accordance with clause 66.3 unless the Board is satisfied that it is necessary to do so in order to:

66.4.1 protect the safety of the Contractor's Patients; or

66.4.2 protect itself from material financial loss.

66.5 Where the Board imposes an Agreement Sanction, the Board shall be entitled to charge the Contractor the reasonable costs of additional administration that the Board has incurred in order to impose, or as a result of imposing, the Agreement Sanction.

## **67 Agreement Sanctions and the NHS Dispute Resolution Procedure**

67.1 If there is a dispute between the Board and the Contractor in relation to an Agreement Sanction that the Board is proposing to impose, the Board shall not, subject to clause 67.4, impose the proposed Agreement Sanction except in the circumstances specified in clause 67.2.1 or 67.2.2.

67.2 If the Contractor refers the dispute relating to the Agreement Sanction to the NHS Dispute Resolution Procedure within twenty eight (28) days beginning on the date on which the Board served notice on the Contractor in accordance with clause 66.4 (or such longer period as

may be agreed in Writing with the Board), and notifies the Board in Writing that it has done so, the Board shall not impose the Agreement Sanction unless:

67.2.1        there has been a determination of the dispute pursuant to Schedule 6 and that determination permits the Board to impose the Agreement Sanction; or

67.2.2        the Contractor ceases to pursue the NHS Dispute Resolution Procedure,

whichever is the sooner.

67.3        If the Contractor does not invoke the NHS Dispute Resolution Procedure within the time specified in clause 67.2, the Board shall be entitled to impose the Agreement Sanction forthwith.

67.4        If the Board is satisfied that it is necessary to impose the Agreement Sanction before the NHS Dispute Resolution Procedure is concluded in order to:

67.4.1        protect the safety of the Contractor's Patients; or

67.4.2        protect itself from material financial loss,

the Board shall be entitled to impose the Agreement Sanction forthwith, pending the outcome of that procedure.

## **68        Termination and the NHS Dispute Resolution Procedure**

68.1        Where the Board is entitled to serve written notice on the Contractor terminating this Agreement pursuant to clauses 60, 61, 62, 64.4, 64.6 or 65 (otherwise than immediately or where the Board terminates the Agreement forthwith), the Board shall, in the notice served on the Contractor pursuant to those clauses, specify a date on which this Agreement terminates that is not less than twenty eight (28) days after the date on which the Board has served that notice on the Contractor unless clause 68.2 applies.

- 68.2 This clause 68.2 applies if the Board 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.
- 68.3 In a case falling within clause 68.1 where the exception in clause 68.2 does not apply, where the Contractor invokes the NHS Dispute Resolution Procedure before the end of the period of notice referred to in clause 68.1, and it notifies the Board in Writing that it has done so, the Agreement shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in clause 68.4.
- 68.4 The Agreement shall only terminate pursuant to this clause 68.4 if and when there has been a determination of the dispute pursuant to Schedule 6 and that determination permits the Board to terminate this Agreement or the Contractor ceases to pursue the NHS Dispute Resolution Procedure, whichever is the sooner.
- 68.5 If the Board is satisfied that it is necessary to terminate the Agreement before the NHS Dispute Resolution Procedure is concluded in order to protect the safety of the Contractor's Patients or protect itself from material financial loss, clauses 68.3 and 68.4 shall not apply and the Board shall be entitled to confirm by written notice to be served on the Contractor, that the Agreement will nevertheless terminate at the end of the period of the notice it served pursuant to clauses 60, 61, 62, 64.4, 64.6 or 65.

## **69 Consequences of Termination**

- 69.1 The termination of this Agreement, for whatever reason, is without prejudice to the accrued rights of either party under this Agreement.
- 69.2 On the termination of this Agreement (or any part of this Agreement as far as is relevant) for any reason, the Contractor shall:

- 69.2.1 subject to the requirements of this clause 69.2, cease performing any work or carrying out any obligations under this Agreement;
  - 69.2.2 co-operate with the Board to enable any outstanding matters under this Agreement to be dealt with or concluded in a satisfactory manner;
  - 69.2.3 deliver up to the Board all property belonging to the Board including all documents, forms, computer hardware and software, drugs, Appliances or medical equipment which may be in the Contractor's possession or control;
  - 69.2.4 take reasonable steps to mitigate any costs which the Board incurs as a result of termination or expiry of this Agreement;
  - 69.2.5 promptly return to the Board or dispose of in accordance with the Board's instructions all Confidential Information and other data and documents including Patient Records and copies of them disclosed or supplied to the Contractor pursuant to or in relation to this Agreement; and
  - 69.2.6 subject to clauses 69.3 to 69.5, the Board's obligation to make payments to the Contractor in accordance with this Agreement shall cease on the date of termination of this Agreement.
- 69.3 Should the Contractor:
- 69.3.1 breach this Agreement entitling the Board to terminate the Agreement forthwith or to serve written notice on the Contractor terminating this Agreement; or
  - 69.3.2 issue the Board with notice of termination under clause 59.1 but cease to perform all or a material part of the Services before the expiry of the notice period; or

69.3.3 issue the Board with notice of termination under clause 59.1 but fail to perform the Services to the Board's reasonable satisfaction during the notice period until the due termination date; or

69.3.4 otherwise cease to provide all or a material part of the Services without notice to the Board in accordance with clause 59.1,

then, without prejudice to all other remedies available to the Board and subject to the Board continuing to pay the Contractor for the Services in full in accordance with this Agreement, the Board shall be entitled to perform all or part of the Services itself and/or (at its sole discretion) engage a replacement Contractor(s) for the provision of all or part of the Services on such terms and conditions as the Board sees fit and the Contractor shall immediately pay the Board the cost of engaging the replacement Contractor(s) together with all additional expenditure incurred by the Board (including all costs incurred of performing all or part of the Services itself, and all costs, claims and expenses arising as a result thereof) throughout the remainder of the unexpired portion of the due notice period in the case of clauses 69.6(b) and 69.6(c) or in the case of clauses 69.6(a) and 69.6(d) for the full notice period. Further, upon request of the Board, the Contractor will grant a licence to the Board free of charge for such period as the Board may require from the date of the Board's request to access and use the Service Environment.

69.4 The obligations contained in clauses 69.1 to 69.3 shall continue to apply notwithstanding the termination of this Agreement.

69.5 On the expiry or termination of this Agreement (or part of this Agreement) for any reason whatsoever:

69.5.1 (subject to clause 69.1 above) the relationship of the parties shall cease and any rights or licences granted under or pursuant to this Agreement shall cease to have effect;

69.5.2 save where this Agreement has been terminated in accordance with clause 63, the Board shall be entitled at its option to require the Contractor to execute such documents as are necessary to assign or novate to the Board or (at the Board's request) use its reasonable endeavours to procure that a New Contractor executes such documents to assign or novate to the New Contractor any lease, rental or maintenance agreements between the Contractor and any third party at the same rates paid by the Contractor as at the date of expiry or termination provided that the Contractor shall endeavour to obtain the relevant third party's consent to the assignment or novation of the lease, rental or maintenance agreement in question; and

69.5.3 the Board or the New Contractor shall be entitled but not obliged to offer any Contractor Staff a contract of employment or a contract for services with the Board or the New Contractor and the Contractor agrees that if such person accepts such offer the Contractor shall and shall procure that its sub-Contractors shall release such person from any breach of contract which such acceptance may otherwise involve.

69.6 No later than six (6) months prior to the expiry of this Agreement or within ten (10) working days of receipt of any notice of termination in the event this Agreement is terminated early or any one or more of the Services is terminated early following the service of notice to terminate, the parties shall hold a review meeting at which appropriate representatives (including the Contractor Representative, Board Representative, Contract Managers and Board Directors) shall be present, the sole purpose of which will be to discuss arrangements for the hand-over of the Services from the Contractor to the Board or to a New Contractor and to implement the Exit Plan and thereafter the

parties shall hold at least one similar review meeting in each month until this Agreement expires or terminates.

- 69.7 The Exit Plan (if any) shall take effect as set out in Schedule 10 (Exit Plan).

## **70 Dispute Resolution**

- 70.1 All negotiations and proceedings connected with any dispute, claim or settlement arising out of or relating to this Agreement shall be conducted in confidence and shall follow the NHS Dispute Resolution Procedure, as set out in Schedule 6, until resolved.

## **71 Intellectual Property**

- 71.1 All Intellectual Property Rights created in connection with the provision of the Services or any services similar to the Services or in each case any part thereof during the term of this Agreement shall vest in and remain the sole property of the Board.
- 71.2 The Board hereby grants to the Contractor a royalty-free, non-exclusive, worldwide licence to use Intellectual Property Rights (to the extent that they relate to the provision or receipt of the Services or services replacing the Services) during the term of this Agreement.

## **72 Staff Transfers<sup>10</sup>**

***[Option 1 – TUPE does not apply on commencement – use 71.1 directly below only]***

- 72.1 The Parties agree and acknowledge that neither TUPE nor the Cabinet Office Statement will operate to transfer the employment of any persons employed or engaged by the Board or any other party to the Contractor on the Commencement Date. If, however, at any time up to, on or after the Commencement Date, it is determined that TUPE applies to any employee of the Board or of any other body or person who is wholly or

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<sup>10</sup> For local determination.

substantially engaged immediately before the Commencement Date in the provision of any service equivalent to the Services or part thereof (the “Transferring Employees”), then the Contractor shall comply in all respects with its obligations under TUPE and with the principles and detail of the Cabinet Office Statement where applicable.

**OR**

***Option 2 – TUPE applies on commencement – use 71.1 to 71.19 below***

- 72.1 In accordance with TUPE and the Cabinet Office Statement, the contracts of employment of the Transferring Employees shall transfer to and have effect on and after the Commencement Date as if originally made between the Transferring Employees and the Contractor except insofar as such contracts relate to an occupational pension scheme and the Contractor shall thereafter assume all rights, powers duties and liabilities under the contracts of employment of the Transferring Employees, including without limitation providing for each of those Transferring Employees who will transfer to the Contractor from the National Health Service rights and/or benefits that are the same or substantially equivalent to those that were made available to those Transferring Employees prior to the Commencement Date under the NHS Injury Benefits Scheme, as governed by the National Health Service (Injury Benefits) Regulations 1995 (as amended from time to time) or the NHS Injury Allowance (as the case may be) had such Transferring Employee remained in the employment of the NHS incumbent contractor(s). For the avoidance of doubt and in respect of those Transferring Employees who will transfer to the Contractor from the National Health Service, the Contractor shall be required to replicate the redundancy terms of the NHS Pension Scheme Regulations 1995 and the NHS Pension Scheme Regulations 2008 (as both may be amended from time to time) where applicable.
- 72.2 The Contractor’s obligations in relation to pension benefits and premature retirement rights are governed by Annex 2 to Schedule 11 and the Parties agree to be bound by its terms.

- 72.3 The Contractor warrants that it shall comply with its obligations under TUPE, including without limitation its obligations under Regulations 13 and 15 of TUPE, in respect of the Transferring Employees.
- 72.4 The Contractor shall in accordance with TUPE recognise the trade unions and/or employee associations representing the Transferring Employees in accordance with each recognition agreement with such trade union and/or employee association in force immediately before the Commencement Date in respect of any of the Transferring Employees.
- 72.5 The Contractor shall indemnify and keep indemnified in full the Board against all claims, costs, damages, expenses, payments and liabilities whatsoever arising after the Commencement Date and before the Termination Date out of or in connection with or in respect of the employment of the Transferring Employees which, for the avoidance of doubt, shall include any claim made by any trade union, elected employee representative or staff association in respect of any Transferring Employee and / or by any third party arising out of or in connection with or in respect of the employment or engagement of or in respect of any act or omissions of any Transferring Employees after the Commencement Date and before the Termination Date.
- 72.6 The Contractor shall indemnify and keep indemnified in full the Board against all claims, costs, damages, expenses, payments and liabilities whatsoever arising from any change or proposed change to the terms and conditions of employment of any Transferring Employees where such change is or is proposed to be effected following the transfer of any such person pursuant to the Agreement and in respect of any such losses incurred by the Board arising from the employment or proposed employment of any such Transferring Employee otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 72.7 The parties acknowledge that TUPE and / or the Cabinet Office Statement may apply upon the Contractor ceasing to provide the

Services or part of the Services. Where TUPE and / or the Cabinet Office Statement apply(ies) in such circumstances, the Contractor shall comply with its obligations under TUPE and / or the Cabinet Office Statement.

72.8 The Contractor shall indemnify the Board and any New Contractor and keep the Board and any New Contractor indemnified in full in respect of all claims, costs, damages, expenses, payments and liabilities whatsoever arising out of or in respect of or in connection with:

72.8.1 any employee or other person employed or engaged by the Contractor in connection with the provision of the Services or relevant part thereof whose contract of employment transfers to the Board or any New Contractor on the expiry or earlier termination or variation of this Agreement;

72.8.2 any act or omission of any employee or other person employed or engaged by the Contractor in connection with the provision of the Services whose contract of employment transfers as aforesaid; and

72.8.3 any of the Contractor's obligations under TUPE arising in connection with such expiry, termination or variation, to the extent that the cause of any applicable claims, proceedings or actions arise on or after the Commencement Date and before the transfer referred to in Clause 71.8.1 above.

72.9 The indemnities in this Clause 71 shall continue to apply after the variation, expiry or termination of this Agreement without any limitation in time and, in particular but without limitation, shall continue to apply in respect of any employee of the Contractor whose contract of employment transfers to the Board on the variation, expiry or termination of this Agreement and, if on the variation, expiry or termination of this Agreement, the contract of employment of any employee engaged or employed by the Contractor in the provision of the Services to the Board shall pass to a New Contractor, the Contractor shall, on written request by the Board, provide to the New

Contractor a written and binding indemnity in respect of each and every employee in the same terms as those set out above with the substitution of a reference to the New Contractor for the references to the Board.

- 72.10 In this Clause 71, all references to employees of the Contractor shall include any persons employed or engaged by the Contractor.
- 72.11 Within twenty one (21) days of being so requested by the Board, the Contractor shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary and such other information as is reasonably requested by the Board to enable the Board to issue invitations to offer for the future provision of the Services or to provide the Services itself.
- 72.12 Where, in the opinion of the Board, TUPE and/or the Cabinet Office Statement are likely to apply on the variation, termination or expiration of the Agreement, the information to be provided by the Contractor in accordance with Clause 71.11 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):
- 72.12.1 the number of employees who would be transferred;
  - 72.12.2 in respect of each of those employees, the identity of the employees who will transfer, the age of those employees, information contained in the statements of employment particulars for those employees (e.g: remuneration, hours of work, holiday entitlements), information relating to any collective agreements which apply to those employees, instances of any disciplinary action within the preceding two (2) years, instances of any grievances raised by employees within the preceding two (2) years and instances of any legal actions taken by employees against the Contractor in the previous two (2) years and instances of potential or threatened legal actions which might be

brought by those employees where the Contractor has reasonable grounds to believe that such actions might occur;

- 72.12.3 such information as may have been provided to the Contractor by any previous employer of its employees organised in respect of and assigned to the Services whose employment transferred to the Contractor pursuant to TUPE;
- 72.12.4 the general terms and conditions applicable to those employees, including Whitley Council and Agenda for Change provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits;
- 72.12.5 all information reasonably required by the Board to determine whether TUPE would apply to transfer the employment of the relevant staff including, but not limited to, information reasonably required by the Board to establish whether all or any of the individuals engaged or employed by the Contractor in connection with the Services (or any part of the Services) can properly be regarded as being organised into a single joint enterprise to fulfil the Contractor's duties and responsibilities to the Board under the terms of the Agreement in respect of the Services or relevant part of the Services; and
- 72.12.6 details of the proportion of the time (approximate, if necessary) spent by each of the individuals engaged or employed by the Contractor in connection with the

Services (or any part of the Services) and the length of time such person has been assigned to the Services or the relevant part of the Services (as the case may be).

- 72.13 Where the Services are to be re-tendered or offered to another external supplier, the Board shall take all necessary precautions to ensure that the information referred to in Clauses 71.11 and 71.12 is given only to bidders who have qualified to offer for the future provision of Services and the Board shall require that such bidders shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the Board and that they shall not use it for any other purpose.
- 72.14 The Contractor shall indemnify the Board against any claim made against the Board at any time by any person in respect of the liability incurred by the Board arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under Clauses 71.11 and 71.12.
- 72.15 The Contractor agrees to use its reasonable endeavours to obtain appropriate consents under the Data Protection Act 1998 or any other legislative requirements from the relevant staff employed or engaged by the Contractor, with respect to its obligations under this Agreement.
- 72.16 The Contractor shall co-operate fully with the Board during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the New Contractor (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements. The Contractor shall allow access to the Practice Premises, in the presence of a representative of the Board, to any person representing any potential new service provider nominated by the Board and, for the purpose of such access, the Board shall give the Contractor seven (7) days' notice

of a proposed visit together with a list showing the names of all the persons who shall be attending the Practice Premises.

72.17 Within ten (10) Working Days of being so requested by the Board, the Contractor shall transfer to the Board, or any person designated by the Board, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Board.

72.18 The Contractor undertakes and agrees that from receipt of any notice to terminate pursuant to this Agreement and/or in anticipation of any termination pursuant to this Agreement and/or during the six month period prior to the expiry of this Agreement, whichever is the earlier, it shall not, without agreement of the Board, not to be unreasonably withheld or delayed;

72.18.1 vary the remuneration of or hours to be worked by or the terms and conditions of employment of any person engaged or employed to provide the Services or artificially reorganise any activities of any such person (save where such amendments arise in the ordinary course of business as a result of annual pay settlements and are made in good faith or where such amendments are made in accordance with a statutory or other legal requirement or are necessary to give effect to any national agreements under which the Contractor is obliged to change the terms and conditions of employment of such persons);

72.18.2 increase or decrease the number of persons that perform the Services; or

72.18.3 deploy, redeploy or replace (unless the individual has resigned or been fairly dismissed and the replacement is so far as possible employed on materially the same terms and conditions as the employee being replaced) any

person engaged or employed to provide the Services or terminate the employment of any such person; or

72.18.4 take any steps to oblige the Trust or any future transferee under TUPE to do any of the matters referred to above.

72.19 In the event that the Contractor fails to fulfill any of its obligations under this Clause 71, upon notice in Writing from the Board and after a reasonable period to remedy such breach, the Board may withhold any amounts which are due to the Contractor under this Contract until such breach is remedied.]

## **73 Major Incidents**

73.1 In the event of a Major Incident the Contractor shall make available, as far as possible, all resources at its disposal to the Board provided that, during the period of a Major Incident, to the extent that the Major Incident impacts upon the Contractor's ability to perform the Services, the Contractor's relevant obligations under this Agreement shall be suspended for such time as the Contractor can demonstrate to the satisfaction of the Board that the Major Incident and its repercussions persist; and any under-performance by the Contractor during a Major Incident shall not constitute a matter for which the Board may terminate this Agreement.

## **74 Fees**

74.1 The Contractor shall not, either itself or through any other person, demand or accept from any of its Patients a fee or other remuneration, for its own or another's benefit in respect of:

74.1.1 the provision of any treatment whether under this Agreement or otherwise; or

74.1.2 any prescription or Repeatable Prescription for any drug, medicine or Appliance,

except in the circumstances set out in clause 74.2.

- 74.2 The Contractor may demand or accept, directly or indirectly, a fee or other remuneration:
- 74.2.1 from any statutory body for services rendered for the purposes of that body's statutory functions;
  - 74.2.2 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;
  - 74.2.3 for treatment which is not primary medical services or otherwise required to be provided under this Agreement and which is given:
    - 74.2.3.1 pursuant to the provisions of the 2006 Act relating to accommodation and services for private Patients; or
    - 74.2.3.2 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 as a specialist providing treatment of the kind the Patient requires and if, within seven (7) days of giving the treatment, the Contractor or the person providing the treatment supplies the Board, on a form provided by it for the purpose, with such information about the treatment as it may require;
- 74.2.4 under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);

- 74.2.5 when the Contractor treats a Patient under clause 74.3, in which case it shall be entitled to demand and accept a reasonable fee (recoverable in certain circumstances under clause 74.4) for any treatment given, if it gives the Patient a receipt;
- 74.2.6 for attending and examining (but not otherwise treating) a Patient:
  - 74.2.6.1 at his request at a police station in connection with possible criminal proceedings against him,
  - 74.2.6.2 at the request of a commercial, educational or not for profit organisation for the purpose of creating a medical report or certificate,
  - 74.2.6.3 for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the Patient;
- 74.2.7 for treatment consisting of an immunisation for which no remuneration is payable by the Board and which is requested in connection with travel abroad;
- 74.2.8 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;
- 74.2.9 for a medical examination:
  - 74.2.9.1 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

- 74.2.9.2 for the purpose of creating a report:
    - 74.2.9.2.1 relating to a road traffic accident or criminal assault; or
    - 74.2.9.2.2 that offers an opinion as to whether a Patient is fit to travel;
  - 74.2.10 for testing the sight of a person in respect of whom the 2006 Act and regulations made pursuant to it prohibit such charges;
  - 74.2.11 where it is a Contractor authorised or required in accordance with arrangements made with the Board under section 126 (arrangements for pharmaceutical services) and in accordance with regulations made under section 129 (regulations as to pharmaceutical services) of the 2006 Act to provide drugs, medicines or Appliances to a Patient and provides for that Patient, otherwise than by way of dispensing services, any Scheduled drug; and
  - 74.2.12 for prescribing or providing drugs or medicines for malaria chemoprophylaxis.
- 74.3 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 accordingly in accordance with clause 74.2.5, subject to the provision for repayment contained in clause 74.4.
- 74.4 Where a person from whom the Contractors received a fee under clause 74.2.5 applies to the Board for a refund within fourteen (14) days of payment of the fee (or such longer period not exceeding a month as the Board may allow if it is satisfied that the failure to apply within fourteen (14) days was reasonable) and the Board 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 Board 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.

## **75 Gifts**

75.1 The Contractor shall keep a register of gifts which:

75.1.1 are given to any of the persons specified in clause 75.2 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 this Agreement; and

75.1.2 have, in its reasonable opinion, a value of more than £100.00.

75.2 The persons referred to in clause 75.1 are:

75.2.1 the Contractor;

75.2.2 any person both legally and beneficially owning a share in the Contractor;

75.2.3 a director or a secretary of the Contractor;

75.2.4 any person employed by the Contractor for the purposes of this Agreement;

75.2.5 any General Medical Practitioner engaged by the Contractor for the purposes of this Agreement;

75.2.6 any spouse or civil partner of a Contractor (where the Contractor is an individual) or of a person specified in clauses 75.2.2 to 75.2.5; or

75.2.7 any person (whether or not of the opposite sex) whose relationship with a Contractor (where the Contractor is an individual) or with a person specified in clauses 75.2.2 to 75.2.5 has the characteristics of the relationship between husband and wife.

- 75.3 Clause 75.1 does not apply where:
- 75.3.1 there are reasonable grounds for believing that the gift is unconnected with Services provided or to be provided by the Contractor;
  - 75.3.2 the Contractor is not aware of the gift; or
  - 75.3.3 the Contractor is not aware that the donor wishes to provide Services to the Contractor.
- 75.4 The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within clause 75.1 and which are given to the persons specified in clauses 75.2.2 to 75.2.7.
- 75.5 The register referred to in clause 75.1 shall include the following information:
- 75.5.1 the name of the donor;
  - 75.5.2 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;
  - 75.5.3 in any other case, the address of the donor;
  - 75.5.4 the nature of the gift;
  - 75.5.5 the estimated value of the gift; and
  - 75.5.6 the name of the person or persons who received the gift.
- 75.6 The Contractor shall make the register available to the Board on request.

## **76 Compliance with Legislation and Guidance**

- 76.1 The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the Board or the Secretary of State or Local Authority in respect of the exercise of their functions under the 2006 Act.

## **77 Survival of Terms**

77.1 Termination or expiry of this Agreement (howsoever occasioned) shall not affect the coming into force or continuation in force of the following listed provisions or any other provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry:

- 77.1.1 Clause 28 (Insurance)
- 77.1.2 Clause 47 (Counter Fraud and Security Management);
- 77.1.3 Clause 49 (Limitation of Liability);
- 77.1.4 Clause 50 (Indemnity);
- 77.1.5 Clause 51 (Complaints);
- 77.1.6 Clause 69 (Consequences of Termination);
- 77.1.7 Clause 70 and Schedule 6 (Dispute Resolution);
- 77.1.8 Clause 72 (Staff Transfers);
- 77.1.9 Clause 79 (Governing Law and Jurisdiction); and
- 77.1.10 Clause 87 (Confidentiality).

## **78 Entire Agreement**

78.1 This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any prior agreements, negotiations, promises, conditions or representations, whether written or oral, and the parties confirm that they did not enter into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement. However, nothing in this Agreement purports to exclude liability on the part of either party for fraudulent misrepresentation.

## **79 Governing Law and Jurisdiction**

79.1 This Agreement and any dispute or claim arising out of or relating to or in connection with it shall be governed by, and construed in accordance with the laws of England.

79.2 All disputes and claims arising out of, relating to or in connection with this Agreement shall, as applicable, be subject to the exclusive jurisdiction of the English courts or the provisions of Schedule 6 if this Agreement is an NHS Contract, to which the parties irrevocably submit.

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

80.1 The failure or delay by either party to enforce any one or more of the terms or conditions of this Agreement shall not operate as a waiver of them, or of the right at any time subsequently to enforce all terms and conditions of this Agreement. Any waiver of any breach of this Agreement shall be in Writing.

## **81 Relationship between the Parties**

81.1 This Agreement is a contract for the provision of services. The Contractor is an independent Contractor of services and is not an employee, partner or agent of the Board. Neither party may represent or conduct its activities so as to give the impression that it is the employer, employee, partner or agent of the other party.

81.2 The Board does not by entering into this Agreement, and shall not as a result of anything done by the Contractor in connection with the performance of this Agreement, incur any contractual liability to any other person.

81.3 Save in respect of clause 52.10, no person who is not a party to this Agreement (including any employee, officer, agent representative or sub-Contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in Writing of the parties which must refer to this clause 81.3.

- 81.4 The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this Agreement. The Contractor shall not delegate, save in accordance with clause 27, its obligations without the prior written authorisation of the Board.
- 81.5 The Board shall not assign or otherwise dispose of the benefit of the whole or part of this Agreement save: to the Secretary of State, any other National Health Service trust, a Strategic Health Authority, a Special Health Authority, a Board or any other person or body replacing any of the foregoing or to whom the Secretary of State exercising his statutory rights would be entitled to transfer such benefits provided any such entity is covered by the National Health Service (Residual Liabilities) Act 1966 or with the prior written consent of the Contractor (such approval not to be unreasonably withheld or delayed).

## **82 Force Majeure**

- 82.1 No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.
- 82.2 In 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.
- 82.3 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 terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 82.4 Unless the Affected Party takes reasonable steps to mitigate the effect of a Force Majeure Event, clause 82.1 shall not have the effect of absolving it from its obligations under this Agreement.

- 82.5 If the Affected Party is delayed or prevented from performing its obligations and duties under this Agreement for a continuous period of three (3) months, then either party may terminate this Agreement by notice in Writing within such period as is reasonable in the circumstances (which shall be no shorter than twenty eight (28) days).
- 82.6 The termination of this Agreement in accordance with clause 82.5 above shall not take effect at the end of the applicable notice period if the Affected Party is able to resume performance of its obligations and duties under this Agreement within the applicable period of notice or if the other party otherwise consents.

## **83 Severance**

- 83.1 Subject to clauses 83.2 and 83.3, if any provision of this Agreement is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such provision shall, to the extent required, be deemed to be deleted from this Agreement and shall not affect the validity, lawfulness or enforceability of any other provisions of this Agreement.
- 83.2 If, in the reasonable opinion of either party, the effect of a deletion in accordance with clause 83.1 above is to undermine the purpose of this Agreement 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 provision or a suitable amendment to this Agreement.
- 83.3 If the parties are unable to reach agreement as to the suitable alternative provision or amendment within a reasonable period of commencement of the negotiations, then the parties may refer the dispute for determination in accordance with the NHS Dispute Resolution Procedure set out in Schedule 6.

## **84 Service of Notice**

- 84.1 Save as otherwise specified in this Agreement or where the context otherwise requires, any notice or other information required or authorised by this Agreement to be given by either party to the other party must be in Writing and may be served:
- 84.1.1 personally;
  - 84.1.2 by post, or in the case of any notice served pursuant to clause 53 (Variation) and clauses 54 to 68 (Termination), registered or recorded delivery post;
  - 84.1.3 by email, or facsimile transmission; or
  - 84.1.4 by any other means which the Board specifies by notice to the Contractor.
- 84.2 Any notice or other information shall be sent to the address specified in this Agreement or such other address as the Board or the Contractor has notified to the other.
- 84.3 Any notice or other information shall be deemed to have been served or given:
- 84.3.1 if it was served personally, at the time of service;
  - 84.3.2 if it was served by post, two (2) Business Days after it was posted; and
  - 84.3.3 if it was served by email or facsimile transmission, if sent during Core Hours then at the time of transmission and if sent outside Core Hours then on the following Business Day.
- 84.4 Where notice or other information is not given or sent in accordance with clauses 84.1 to 84.3, such notice or other information is invalid unless the person receiving it elects, in Writing, to treat it as valid.

## **85 Data Protection**

- 85.1 In this clause 85, the terms Personal Data, Data Subject, Data Controller, Data Processor and Sensitive Personal Data have the

meanings given in the Data Protection Legislation and Processing, Process and Processed shall be construed accordingly.

85.2 The Board and the Contractor shall:

- 85.2.1 identify to each other an individual within each of their respective organisations authorised to respond to enquiries regarding any Personal Data;
- 85.2.2 deal with enquiries relating to Personal Data promptly, including those from the other and/or the Information Commissioner in relation to any Personal Data;
- 85.2.3 deal with any Data Subject request in relation to that Data Subject's Personal Data in accordance with all relevant Data Protection Legislation;
- 85.2.4 promptly provide to each other all information in its possession concerning any unauthorised or accidental disclosure or access made by a Staff member, director, agent, sub-Contractor or any other identified or unidentified third party; and
- 85.2.5 comply with any relevant changes in the Data Protection Legislation in respect of the Personal Data.

85.3 The parties acknowledge that the Board may be the Data Controller and that the Contractor may be a Data Processor in respect of Personal Data supplied by the Board to the Contractor under this Agreement. The parties also recognise and agree that the Contractor may act as a Data Controller in respect of Personal Data. The Contractor warrants to the Board that where it acts as Data Processor, it has and will continue to have:

- 85.3.1 put in place appropriate technical and organisational measures against Processing of Personal Data and against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such

measures) as well as reasonable security programmes and procedures for the purpose of ensuring that only authorised personnel have access to the Personal Data processing equipment to be used to process the Personal Data, and that any persons whom it authorises to have access to the Personal Data shall respect and maintain all due confidentiality;

85.3.2 a level of security programmes and procedures which reflect:

85.3.2.1 the level of damage that might be suffered by a Data Subject to whom the Personal Data relates as a result of unauthorised or unlawful possession of the Personal Data or the loss or destruction of or damage to the Personal Data; and

85.3.2.2 the state of technological development and the costs of implementing such programmes and procedures; and

85.3.3 as required by the Data Protection Legislation, such security programmes and procedures which specifically address the nature of any Sensitive Personal Data.

85.4 Where the Contractor is acting as Data Processor in respect of information provided under this Agreement, the Contractor shall process Personal Data in compliance with the instructions of the Board, subject to compliance with Data Protection Legislation.

## **86 Freedom of Information**

86.1 The Contractor acknowledges that the Board is subject to the requirements of the Code of Practice on Government Information and the Freedom of Information Act 2000 (the “**FOI Act**”) and shall assist

and co-operate with the Board to enable the Board to comply with its disclosure obligations. Accordingly the Contractor agrees that:

- 86.1.1 this Agreement is subject to the obligations and commitments of the Board under the Code of Practice on Openness in the NHS and the FOI Act as the same may be amended or replaced from time to time;
- 86.1.2 subject to clause 86.1.1 the decision on whether any exemption to the general obligations of public access to information applies to any Request for Information (as defined in the FOI Act) is a decision solely for the Board;
- 86.1.3 where the Board is managing a Request for Information, it shall only be obliged to consult with the Contractor in accordance with any code of practice issued under section 45 of the FOI Act and from time to time in force;
- 86.1.4 where a Request for Information is received by the Contractor, it will transfer the Request for Information to the Board's Contract Manager as soon as practicable and in any event within three (3) Business Days of receiving a Request for Information;
- 86.1.5 it will not respond directly to a Request for Information unless expressly authorised to do so by the Board;
- 86.1.6 the Contractor itself is subject to the FOI Act as a public body operating under contract to the Board.

86.2 The Board shall be responsible for determining (without in any way fettering its discretion) whether any Commercially Sensitive Information should be disclosed in response to a Request for Information, but shall (subject to clause 86.1.3 above) use all reasonable endeavours to advise the Contractor of such Request for Information as soon as reasonably possible and take any representations the Contractor may make into account when determining whether the Commercially Sensitive Information should be disclosed.

- 86.3 The Contractor shall use all reasonable endeavours to assist the Board in complying with such obligations as may be imposed upon them by the FOI Act including:
- 86.3.1 providing all necessary assistance to the Board in complying with any Request For Information served on the Board under the FOI Act within the time for compliance set out in section 10 of the FOI Act;
  - 86.3.2 processing information provided by the Board in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct issued under section 46 of the FOI Act; and
  - 86.3.3 providing the Board with a copy of all information in its possession, or power in the form that the Board requires within 5 Business Days (or such other period as the Board may specify) of the Board's request in order to satisfy any Request for Information.

## 87 Confidentiality

- 87.1 The party receiving Confidential Information (the “**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any Confidential Information to any third party, without the prior written consent of the party who disclosed the Confidential Information (the “**Discloser**”) provided that:
- 87.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement and which were not covered by any previous obligation of confidentiality; and
  - 87.1.2 the provisions of this clause 87.1 shall not apply to any Confidential Information which:

87.1.2.1 is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;

87.1.2.2 is obtained through a third party who is lawfully authorised to disclose such information; or

87.1.2.3 is authorised for release by the prior written consent of the Discloser.

87.2 Nothing in clause 87.1 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.

87.3 Where the Contractor is the Recipient, nothing in this clause 87 shall prevent the Contractor from disclosing Confidential Information to any of the Contractor's employees, officers, professional advisers, Contractors or agents who need to see and use it on behalf of the Recipient provided that they are bound by confidentiality undertakings.

87.4 Neither party shall make any announcement or otherwise publicise the existence of or disclose to any person the provisions of this Agreement without the prior written consent of the other party.

87.5 The provisions of this clause 87 shall continue in force following termination of this Agreement for any reason whatsoever and without limit in time.

## **88 NHS Branding**

88.1 The Contractor shall ensure that the Premises is 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 Premises and in communications with Patients provided that such branding has been agreed by the Department of Health.

## 89 Discrimination

- 89.1 Neither party shall discriminate unlawfully within the meaning and scope of any law, enactment, order, regulation or similar instrument relating to discrimination (whether relating to race, gender, disability, religion or otherwise) in employment or performance of the Services and both parties shall take all reasonable steps to ensure observance of this clause 89 by all members of the parties' Staff and by all Contractors and sub-Contractors of the parties.
- 89.2 Each party shall indemnify the other party against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the party as a result of any breach of this clause 89 by the other party, its employees or agents.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate

**Signed** by the parties or their duly authorised representatives on the date of this Agreement.

..... [Full name] Date.....

For and on behalf of [NHS England] [Job title]

..... [Full name] Date.....

[Job title]

[Witness]

..... [Full Name] Date.....

[For and on behalf

of [insert practice name here]

[Job title]

Add any other relevant signatories on behalf of the practice below:

..... [Full name] Date.....  
[Job title]  
[Witness]

## **Schedule 1**

### **Service Specification**

#### **Part 1 - Core Objectives and Practice Specific Objectives**

**[Core and Practice Specific Objectives appended]<sup>11</sup>**

#### **Part 2 – Additional Services**

- 1.1 In relation to each Additional Service it provides, the Contractor shall provide such facilities and equipment as are necessary to enable it properly to perform that service.
- 1.2 Where an Additional Service is to be funded under the global sum, the Contractor must provide that Additional Service at such times, within Core Hours, as are appropriate to meet the reasonable needs of its Patients. The Contractor must also have in place arrangements for its Patients to access such services throughout the Core Hours in case of emergency.
- 1.3 The Contractor shall provide the Additional Services set out in paragraph 1.4 to:
  - 1.3.1 its Registered Patients; and
  - 1.3.2 persons accepted by it as Temporary Residents.
- 1.4 The Contractor shall provide to the Patients specified in paragraph 1.3:<sup>12</sup>
  - 1.4.1 [Cervical Screening Services];
  - 1.4.2 [Contraceptive Services];
  - 1.4.3 [Vaccines and Immunisations];
  - 1.4.4 [Childhood Vaccines and Immunisations];
  - 1.4.5 [Child Health Surveillance Services];
  - 1.4.6 [Maternity Medical Services];
  - 1.4.7 [Minor Surgery].

#### **Cervical screening<sup>13</sup>**

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<sup>11</sup> For local determination.

<sup>12</sup> These sub-paragraphs are for local agreement depending on what additional services are being provided and should be included or removed as appropriate

- 1.5 The Contractor shall-
  - 1.5.1 provide the services described in paragraph 1.6; and
  - 1.5.2 make such records as are referred to in paragraph 1.7.
- 1.6 The services referred to in paragraph 1.5 are:
  - 1.6.1 the provision of any necessary information and advice to assist women identified by the Board as recommended nationally for a cervical screening test in making an informed decision as to participation in the NHS Cervical Screening Programme;
  - 1.6.2 the performance of cervical screening tests on women who have agreed to participate in that Programme;
  - 1.6.3 arranging for women to be informed of the results of the test;
  - 1.6.4 ensuring that test results are followed up appropriately.
- 1.7 The records referred to in paragraph 1.5 are an accurate record of the carrying out of a cervical screening test, the result of the test and any clinical follow up requirements.

#### **Contraceptive services<sup>14</sup>**

- 1.8 The Contractor shall make available the following services to all of its Patients who request such services:
  - 1.8.1 the giving of advice about the full range of contraceptive methods;
  - 1.8.2 where appropriate, the medical examination of Patients seeking such advice;
  - 1.8.3 the treatment of such Patients for contraceptive purposes and the prescribing of contraceptive substances and Appliances (excluding the fitting and implanting of intrauterine devices and implants);
  - 1.8.4 the giving of advice about emergency contraception and where appropriate, the supplying or prescribing of emergency hormonal contraception or, where the Contractor has a conscientious objection to emergency contraception, prompt referral to another provider of primary medical services who does not have such conscientious objections;
  - 1.8.5 the provision of advice and referral in cases of unplanned or unwanted pregnancy, including advice about the availability of free pregnancy testing in the Practice Area and, where appropriate, where the Contractor has a conscientious objection to the termination of pregnancy, prompt referral to another provider of primary medical services who does not have such conscientious objections;

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<sup>13</sup> These paragraphs are only required where the Agreement includes the provision of Cervical Screening Services. If the Contractor is not providing Cervical Screening Services, these paragraphs should be deleted.

<sup>14</sup> These paragraphs are only required where the Agreement includes the provision of Contraceptive Services. If the Contractor is not providing Contraceptive Services, these paragraphs should be deleted.

- 1.8.6 the giving of initial advice about sexual health promotion and sexually transmitted infections; and
- 1.8.7 the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections.

**Vaccines and immunisations<sup>15</sup>**

- 1.9 The Contractor must comply with paragraphs 1.9 to 1.12:
- 1.10 The Contractor must:
  - 1.10.1 offer to provide to Patients all vaccines and immunisations (other than childhood immunisations and the combined Haemophilus influenza type B and Meningitis C booster vaccine) of the type and in the circumstances set out in the GMS Statement of Financial Entitlements;
  - 1.10.2 taking into account the individual circumstances of the Patient, consider whether immunisation ought to be administered by the Contractor or other health professional or a prescription form ought to be provided for the purpose of the Patient self-administering immunisation;
  - 1.10.3 provide appropriate information and advice to Patients about such vaccines and immunisations;
  - 1.10.4 record in the Patient's record any refusal of the offer referred to in sub-paragraph 1.10.1;
  - 1.10.5 where the offer is accepted and immunisation is to be administered by the Contractor or other health professional, include in the Patient's record the information specified in paragraph 1.11; and
  - 1.10.6 where the offer is accepted and the immunisation is not to be administered by the Contractor or other Health Care Professional, issue a prescription form for the purpose of self-administration by the Patient.
- 1.11 The specified information referred to in paragraph 1.10.5 is:
  - 1.11.1 the Patient's consent to immunisation or the name of the person who gave consent to the immunisation and that person's relationship to the Patient;
  - 1.11.2 the batch numbers, expiry date and title of the vaccine;
  - 1.11.3 the date of administration;
  - 1.11.4 in a case where two vaccines are administered by injection in close succession, the route of administration and the injection site of each vaccine;
  - 1.11.5 any contraindications to the vaccine or immunisation; and

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<sup>15</sup> These paragraphs are only required where the Agreement includes the provision of vaccines and immunisations. If the Contractor is not providing vaccines and immunisations, these paragraphs should be deleted

- 1.11.6 any adverse reactions to the vaccine or immunisation.
- 1.12 The Contractor must ensure that all staff involved in the administration of immunisations are trained in the recognition and initial treatment of anaphylaxis.
- 1.13 In this paragraph 1.10, “patient records” means the record which is kept in accordance with clause 29.

#### **Childhood vaccines and immunisations<sup>16</sup>**

- 1.14 The Contractor shall:
  - 1.14.1 offer to provide to children all vaccines and immunisations of the type and in the circumstances which are set out in the GMS Statement of Financial Entitlements;
  - 1.14.2 provide appropriate information and advice to Patients and, where appropriate, their parents about such vaccines and immunisations;
  - 1.14.3 record in the Patient’s record kept in accordance with clause 29 any refusal of the offer referred to in sub-paragraph 1.14.1.
- 1.15 Where the offer is accepted, administer the immunisations, and include in the Patient’s record kept in accordance with clause 29:
  - 1.15.1 the name of the person who gave consent to the immunisation and his relationship to the Patient;
  - 1.15.2 the batch numbers, expiry date and title of the vaccine;
  - 1.15.3 the date of administration;
  - 1.15.4 in a case where two vaccines are administered in close succession, the route of administration and the injection site of each vaccine;
  - 1.15.5 any contraindications to the vaccine; and
  - 1.15.6 any adverse reactions to the vaccine.
- 1.16 The Contractor shall ensure that all staff involved in administering vaccines are trained in the recognition and initial treatment of anaphylaxis.

#### **Child health surveillance<sup>17</sup>**

- 1.17 The Contractor shall, in respect of any Child under the age of five for whom it has responsibility under the Agreement:
  - 1.17.1 provide the services described in paragraph 1.18, other than any examination so described which the Parent refuses to allow the Child to undergo, until the

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<sup>16</sup> These paragraphs are only required where the Agreement includes the provision of Childhood Vaccines and Immunisations. If the Contractor is not providing Childhood Vaccines and Immunisations, these paragraphs should be deleted.

<sup>17</sup> These paragraphs are only required where the Agreement includes the provision of Childhood Health Surveillance. If the Contractor is not providing Childhood Health Surveillance, these paragraphs should be deleted.

date upon which the Child attains the age of five years; and

1.17.2 maintain such records as are specified in paragraph 1.19.

1.18 The services referred to in paragraph 1.17.1 are:

1.18.1 the monitoring:

1.18.1.1 by the consideration of any information concerning the Child received by or on behalf of the Contractor, and

1.18.1.2 on any occasion when the Child is examined or observed by or on behalf of the Contractor (whether pursuant to sub-paragraph 1.18.2 or otherwise),

of the health, well-being and physical, mental and social development (all of which characteristics are referred to in paragraph 1.19 as “development”) of the Child while under the age of 5 years with a view to detecting any deviations from normal development;

1.18.2 the examination of the Child at a frequency that has been agreed with the Board in accordance with the nationally agreed evidence based programme set out in the revised fourth edition of “Health for all Children” (David Hall and David Elliman, September 2006, Oxford University Press ISBN 978-0-19-857084-4).

1.19 The records referred to in paragraph 1.17.2 are an accurate record of:

1.19.1 the development of the Child while under the age of 5 years, compiled as soon as is reasonably practicable following the first examination of that Child and, where appropriate, amended following each subsequent examination; and

1.19.2 the responses (if any) to offers made to the Child’s Parent for the Child to undergo any examination referred to in paragraph 1.18.2.

### **Maternity medical services<sup>18</sup>**

1.20 The Contractor shall:

1.20.1 provide to female Patients who have been diagnosed as pregnant all necessary maternity medical services throughout the antenatal period;

1.20.2 provide to female Patients and their babies all necessary maternity medical services throughout the postnatal period other than neonatal checks;

1.20.3 provide all necessary maternity medical services to female Patients whose pregnancy has terminated as a result of miscarriage or abortion or, where the Contractor has a conscientious objection to the termination of pregnancy,

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<sup>18</sup> These paragraphs are only required where the Agreement includes the provision of Maternity Medical Services. If the Contractor is not providing Maternity Medical Services, these paragraphs should be deleted.

prompt referral to another provider of primary medical services, who does not have such conscientious objections.

1.21 In paragraph 1.20:

“antenatal period” means the period from the start of the pregnancy to the onset of labour,

“maternity medical services” means-

- (i) in relation to female Patients (other than babies) all primary medical services relating to pregnancy, excluding intra partum care, and
- (ii) in relation to babies, any primary medical services necessary in their first 14 days of life, and

“postnatal period” means the period starting from the conclusion of delivery of the baby or the Patient's discharge from secondary care services, whichever is the later, and ending on the fourteenth day after the birth.

### **Minor surgery<sup>19</sup>**

1.22 The Contractor shall make available to Patients where appropriate curettage and cautery and, in relation to warts, verrucae and other skin lesions, cryocautery.

1.23 The Contractor shall ensure that its record of any treatment provided pursuant to paragraph 1.22 includes the consent of the Patient to that treatment.

## **Part 3 – Enhanced Services**

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<sup>19</sup> These paragraphs are only required where the Agreement includes the provision of Minor Surgery. If the Contractor is not providing Minor Surgery, these paragraphs should be deleted.

## **Schedule 2**

### **Calculation of Service Price/Charges**

**[For local agreement: Reference should be made where appropriate to SFE entitlement, PCR, QOF, seniority payments, superannuation, national insurance contributions, growth, administration, premises costs, any applicable KPIs and LMC levy deductions. Calculation of annual funding changes and uplifts should make reference to NHS England guidance on the arrangements it will apply to ensure fair and equitable treatment of all GP practices.]**

**Schedule 3**  
**List of Prescribed Medical Certificates**

Description of medical certificate	Short title of 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 award by the Secretary of State; or to enable proxy to draw pensions etc	Naval and Marine Pay and Pensions Act 1865, Air Force (Constitution) Act 1917, Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, Personal 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	Juries Act 1974

Description of medical certificate	Short title of enactment under or for the purpose of which certificate required
service	
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 charges in respect of drugs, medicines and appliances	National Health Service Act 1977
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

## **Schedule 4**

### **Prescribing**

The parties note that the provisions in this Schedule shall only apply if and to the extent that they are relevant to the Services and the parties.

#### **1 Prescribing**

1.1 The Contractor shall ensure that:

- 1.1.1 any Prescription Form or Repeatable Prescription for drugs, medicines or Appliances issued or created by a Prescriber;
- 1.1.2 any Home Oxygen Order Form issued by a Health Care Professional; and
- 1.1.3 any Listed Medicines Voucher issued by a Prescriber or any other person acting under this Agreement,

complies as appropriate with the requirements in paragraphs 1.2 to 1.14, 2 and 5 to 8.

1.2 Subject to paragraph 1.3 and 1.4 and to paragraphs 6 and 7, a Prescriber shall order any drugs, medicines or Appliances which are needed for the treatment of any Patient who is receiving treatment under this Agreement by:

- 1.2.1 issuing to that Patient a Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription completed in accordance with paragraph 1.7; or
- 1.2.2 where paragraph 2.1 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.

- 1.3 A Health Care Professional shall order any Home Oxygen Services which are needed for the treatment of any Patient who is receiving treatment under this Agreement by issuing a Home Oxygen Order Form.
- 1.4 During an outbreak of an illness for which a Listed Medicine may be used for treatment or for prophylaxis, if:
- 1.4.1 the Secretary of State or the Board has made arrangements for the distribution of a Listed Medicine free of charge; and
  - 1.4.2 that Listed Medicine is needed for treatment or prophylaxis of any Patient who is receiving treatment under this Agreement,
- a Prescriber may, or if the Patient has not attained the age of thirteen (13) years must, order that Listed Medicine by using a Listed Medicines Voucher, which the Prescriber must sign.
- 1.5 During an outbreak of an illness for which a Listed Medicine may be used for treatment or for prophylaxis, if:
- 1.5.1 the Secretary of State or the Board has made arrangements for the distribution of a Listed Medicine free of charge;
  - 1.5.2 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;
  - 1.5.3 a person acting on behalf of the Contractor, who is not a Prescriber but who is authorised to order Listed Medicines by the Board, has applied the criteria referred to in paragraph 1.5.2 to any Patient who is receiving treatment under this Agreement; and

- 1.5.4            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.

- 1.6            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.
- 1.7            In issuing any Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription the Prescriber shall himself sign the Prescription Form or Repeatable Prescription in ink with his initials, or 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.
- 1.8            A Prescription Form or Repeatable Prescription shall not refer to any previous Prescription Form or Repeatable Prescription.
- 1.9            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 paragraph 8.
- 1.10           A Home Oxygen Order Form shall be signed by a Health Care Professional.
- 1.11           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:
- 1.11.1           use only the Non-Electronic Prescription Form provided specially for the purposes of supply by instalments;

- 1.11.2 specify the number of instalments to be dispensed and the interval between each instalment; and
  - 1.11.3 order only such quantity of the drug as will provide treatment for a period not exceeding fourteen (14) days.
- 1.12 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 paragraph 1.11.
- 1.13 In a case of urgency a Prescriber may request a Chemist to dispense a drug before a Prescription Form or Repeatable Prescription is issued or created, only if:
  - 1.13.1 that drug or medicine is not a Scheduled drug;
  - 1.13.2 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
  - 1.13.3 he undertakes to:
    - 1.13.3.1 furnish the Chemist within 72 hours with a Non-Electronic Prescription Form or non-electronic Repeatable Prescription completed in accordance with paragraph 1.7, or
    - 1.13.3.2 transmit to the Electronic Prescription Service within 72 hours an Electronic Prescription.
- 1.14 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 only if:
  - 1.14.1 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;

1.14.2 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

1.14.3 he undertakes to:

1.14.3.1 furnish the Chemist within 72 hours with a Non-Electronic Prescription Form or Non-Electronic Repeatable Prescription completed in accordance with paragraph 1.7, or

1.14.3.2 transmit to the Electronic Prescription Service within 72 hours an Electronic Prescription.

## **2 Electronic Prescriptions**

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

2.1.1 the Board authorises the Contractor to use the Electronic Prescription Service;

2.1.2 the Patient to whom the prescription relates has:

2.1.2.1 nominated one or more Dispensers;

2.1.2.2 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

2.1.2.3 consents to the use of an Electronic Prescription on the particular occasion; and

2.1.3 the prescription is not:

- 2.1.3.1 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;
  - 2.1.3.2 for supply by instalments under paragraph 1.11; or
  - 2.1.3.3 a bulk prescription issued for a school or institution under paragraph 8.
- 2.2 A Health Care Professional may not order Home Oxygen Services by means of an Electronic Prescription.
- 2.3 In relation to a Patient who is a Child or an adult who lacks the capacity to nominate a Dispenser, paragraph 2.1.2 shall apply as if the reference to the Patient to whom the prescription relates included a reference to:
  - 2.3.1 in the case of a Child, that Patient's Parent or other person referred to in Schedule 5 paragraph 5.4.1; or
  - 2.3.2 in the case of an adult, that Patient's relative, 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.
- 2.4 A Prescriber who orders drugs, medicines or Appliances by means of an Electronic Prescription shall:
  - 2.4.1 in the case of an Electronic Repeatable Prescription, issue the Patient, if the Patient so requests, with a form provided by the Board for the purpose of recording details of that Electronic Repeatable Prescription and linked to that Electronic Repeatable Prescription by a number contained on the form; and

- 2.4.2 in the case of an Electronic Prescription Form, issue the Patient, if the Patient so requests, with a written record of the prescription which has been created.

### **3 Nomination of Dispensers for the purpose of Electronic Prescriptions**

- 3.1 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:
  - 3.1.1 where he does not have a nominated Dispenser, the Dispenser chosen by that Patient; and
  - 3.1.2 where he does have a nominated Dispenser:
    - 3.1.2.1 a replacement Dispenser; or
    - 3.1.2.2 a further Dispenser,chosen by that Patient.
- 3.2 Paragraph 3.1.2.2 shall not apply if the number of nominated Dispensers would thereby exceed the maximum number permitted by the Electronic Prescription Service.
- 3.3 Schedule 5 paragraph 5.4 shall apply in relation to requests under paragraph 3.1 as it applies to applications for inclusion in a List of Patients.
- 3.4 A Contractor:
  - 3.4.1 shall not seek to persuade a Patient to nominate a Dispenser recommended by the Prescriber or the Contractor; and
  - 3.4.2 shall, if asked by the Patient to recommend a Chemist 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 Board.

## **4 Repeatabable Prescribing Services**

4.1 The Contractor may only provide Repeatabable Prescribing Services to any person on its List of Patients if it:

- 4.1.1 satisfies the conditions in paragraph 4.2; and
- 4.1.2 has notified the Board of its intention to provide Repeatabable Prescribing Services in accordance with paragraphs 4.3 and 4.4.

4.2 The conditions referred to in paragraph 4.1.1 are:

- 4.2.1 the Contractor has access to computer systems and software which enable it to issue Non-Electronic Repeatabable Prescriptions and Batch Issues; and
- 4.2.2 the Practice Premises at which the Repeatabable 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.

4.3 The notification referred to in paragraph 4.1.2 is a notification, in Writing, by the Contractor to the relevant body that it:

- 4.3.1 wishes to provide Repeatabable Prescribing Services;
- 4.3.2 intends to begin to provide those services from a specified date; and
- 4.3.3 satisfies the conditions in paragraph 4.2.

4.4 The date specified by the Contractor pursuant to paragraph 4.3.2 must be at least ten (10) days after the date on which the notification specified in paragraph 4.1 is given.

- 4.5 Nothing in paragraphs 4.1 to 4.8 requires a Contractor or Prescriber to provide Repeatable Prescribing Services to any person.
- 4.6 A Prescriber may only provide Repeatable Prescribing Services to a person on a particular occasion if:
- 4.6.1 that person has agreed to receive such services on that occasion; and
  - 4.6.2 the Prescriber considers that it is clinically appropriate to provide such services to that person on that occasion.
- 4.7 The Contractor may not provide Repeatable Prescribing Services to any Patient of its to whom any of the persons specified in paragraph 4.8 is authorised or required by the Board in accordance with arrangements made under section 126 (arrangements for pharmaceutical services) and section 129 (regulations as to pharmaceutical services) of the 2006 Act to provide pharmaceutical services.
- 4.8 The persons referred to in paragraph 4.7 are:
- 4.8.1 a medical practitioner who is a party to this Agreement;
  - 4.8.2 in the case of an agreement with a qualifying body, any medical practitioner who is both a legal and beneficial shareholder in that body; or
  - 4.8.3 any medical practitioner employed by the Contractor.

## **5 Repeatable Prescriptions**

- 5.1 A Prescriber who issues a Non-Electronic Repeatable Prescription must at the same time issue the appropriate number of Batch Issues.
- 5.2 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 he must:

5.2.1 in the case of a Non-Electronic Repeatable Prescription:

5.2.1.1 notify the person; and

5.2.1.2 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

5.2.2 in the case of an Electronic Repeatable Prescription:

5.2.2.1 arrange with the Electronic Prescription Service for the cancellation of the original Repeatable Prescription; and

5.2.2.2 create a replacement Electronic Repeatable Prescription relating to that person and notify him that he has done so.

5.3 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:

5.3.1 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;

5.3.2 he has issued the person with a Non-Electronic Repeatable Prescription in place of the Electronic Repeatable Prescription; or

5.3.3 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.

5.4 Where a Prescriber has cancelled a person's Electronic Repeatable Prescription in accordance with paragraph 5.3 he must, as soon as is practicable, notify that person.

5.5 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:

5.5.1 Appliances ordered on his Repeatable Prescription or no longer appropriate or safe for him to continue to receive Repeatable Prescribing Services;

5.5.2 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 paragraph 5.2.1 (for example, because the person wishes to obtain the drugs, medicines or Appliances from a different Chemist); or

5.5.3 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.

5.6 Where the circumstances in paragraphs 5.5.1 to 5.5.3 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.

## **6 Restrictions on prescribing by medical practitioners**

6.1 In the course of treating a Patient to whom he is providing treatment under this Agreement, 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 (GMS contracts: prescription of drugs etc.) 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 74.1.2, prescribe such a drug, medicine or other substance for that Patient in the course of that treatment under a private arrangement.

6.2 In the course of treating a Patient to whom he is providing treatment under this Agreement, 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 or medicine which can only be ordered for specified Patients and specified purposes unless:

- 6.2.1 that Patient is a person of the specified description;
- 6.2.2 that drug or medicine or other substance is prescribed for that Patient only for the specified purpose; and
- 6.2.3 if the order is on a Prescription Form, the practitioner includes:
  - 6.2.3.1 the reference "SLS"; or
  - 6.2.3.2 if the order is under arrangements made by the Secretary of State or the Board for the distribution of a Listed Medicine free of charge, the reference "ACP",

but may, subject to clause 74.1.2, prescribe such a drug for that Patient in the course of that treatment under a private arrangement.

6.3 In the course of treating a Patient to whom he is providing treatment under this Agreement, a medical practitioner shall not order on a Prescription Form or Repeatable Prescription a restricted availability Appliance unless:

6.3.1 the Patient is a person, or it is for a purpose, specified in the Drug Tariff; and

6.3.2 the practitioner includes on the Prescription Form the reference "SLS",

but may, subject to clause 74.1.2, prescribe such an Appliance for that Patient in the course of that treatment under a private arrangement.

6.4 In the course of treating a Patient to whom he is providing treatment under this Agreement, 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 to the Misuse of Drugs Regulations 2001, but may, subject to clause 74.1.2, prescribe such a drug for that Patient in the course of that treatment under a private arrangement.

## **7 Restrictions on prescribing by Supplementary Prescribers**

7.1 The Contractor shall have arrangements in place to secure that a Supplementary Prescriber will:

7.1.1 issue or create a prescription for a prescription only medicine;

7.1.2 administer a prescription only medicine for parenteral administration; or

7.1.3 give directions for the administration of a prescription only medicine for parenteral administration,

as a Supplementary Prescriber only under the conditions set out in paragraph 7.2.

- 7.2 The conditions referred to in paragraph 7.1 are that:
- 7.2.1 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;
  - 7.2.2 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; and
  - 7.2.3 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:
    - 7.2.3.1 the Patient is a person of the specified description;
    - 7.2.3.2 the medicine is prescribed for that Patient only for the specified purposes; and
    - 7.2.3.3 if the Supplementary Prescriber is issuing or creating a prescription on a Prescription Form, the Prescriber includes on the form the reference “SLS” or, in the case of a Listed Medicine ordered under arrangements made by the Secretary of State or the Board for the medicine's distribution free of charge, the reference “ACP”.

7.3 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:

7.3.1 an Appliance; or

7.3.2 which is not a prescription only medicine,

as a Supplementary Prescriber under the conditions set out in paragraph 7.4.

7.4 The conditions referred to in paragraph 7.3 are that:

7.4.1 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:

7.4.1.1 the name of the Patient to whom the plan relates;

7.4.1.2 the illness or conditions which may be treated by the Supplementary Prescriber;

7.4.1.3 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;

7.4.1.4 reference to the class or description of medicines or types of Appliances which may be prescribed or administered under the plan;

7.4.1.5 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;

- 7.4.1.6 relevant warnings about known sensitivities of the Patient to, or known difficulties of the Patient with, particular medicines or Appliances;
- 7.4.1.7 the arrangements for notification of:
  - 7.4.1.7.1 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
  - 7.4.1.7.2 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
- 7.4.1.8 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;
- 7.4.2 he has access to the health care 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;
- 7.4.3 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 a general medical services contract;

7.4.4 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:

7.4.4.1 the Patient is a person of the specified description;

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

7.4.4.3 issuing or creating the prescription, he includes on the Prescription Form the reference "SLS";

7.4.5 if it is a prescription for an Appliance, the Appliance is listed in Part IX of the Drug Tariff; and

7.4.6 if it is a prescription for a restricted availability Appliance:

7.4.6.1 the Patient is a person of a description mentioned in the entry in Part IX of the Drug Tariff in respect of that Appliance;

7.4.6.2 the Appliance is prescribed only for the purposes specified in respect of that person in that entry; and

7.4.6.3 when issuing or creating the prescription, he includes on the Prescription Form the reference "SLS".

7.5 In paragraph 7.4.1, "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:

- 7.5.1 the Patient to whom the plan relates;
- 7.5.2 the medical practitioner or dentist who is a party to the plan; and
- 7.5.3 Supplementary Prescriber who is to prescribe, give directions for administration or administer under the plan.

## **8 Bulk prescribing**

8.1 Where:

- 8.1.1 the Contractor is responsible under this Agreement 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
- 8.1.2 a Prescriber orders, for any two or more of those persons for whose treatment the Contractor is responsible, drugs, medicines or Appliances to which paragraphs 8.1 to 8.3 apply,

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

8.2 Prescriber uses a single Non-Electronic Prescription Form for the purpose mentioned in paragraph 8.1.2, 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:

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

8.3 Paragraphs 8.1 to 8.3 apply to any drug, medicine or Appliance which can be supplied as part of pharmaceutical services or Local Pharmaceutical Services and which:

8.3.1 in the case of a drug, 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

8.3.2 in the case of an Appliance, does not contain such a product.

## **9 Excessive prescribing**

9.1 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.

9.2 In considering whether a Contractor has breached its obligations under paragraph 9.1, the Board may, if the Contractor consents, seek the views of the Local Medical Committee (if any) for the area in which the Contractor provides services under this Agreement.

## **10 Provision of drugs, medicines and Appliances for immediate treatment or personal administration**

10.1 Subject to paragraph 10.2, a Contractor:

10.1.1 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

10.1.2 may provide to a Patient any drug, medicine or Appliance, not being a Scheduled drug, which he 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.

10.2 Nothing in paragraph 10.1 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 thereunder.

## **11 Inquiries about prescriptions and referrals**

11.1 A Contractor shall, subject to paragraphs 11.2 and 11.3, sufficiently answer any inquiries whether oral or in Writing from the Board concerning:

11.1.1 any Prescription Form or Repeatable Prescription issued or created by a Prescriber;

11.1.2 the considerations by reference to which Prescribers issue such forms;

11.1.3 the referral by or on behalf of the Contractor of any Patient to any other services provided under the 2006 Act; or

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

11.2 An inquiry referred to in paragraph 11.1 may only be made for the purpose either of obtaining information to assist the Board to discharge its functions or of assisting the Contractor in the discharge of its obligations under this Agreement.

11.3 The Contractor shall not be obliged to answer any inquiry referred to in paragraph 11.1 unless it is made:

11.3.1 in the case of paragraph 11.1.1 or paragraph 11.1.2,  
by an appropriately qualified Health Care Professional;  
or

11.3.2 in the case of paragraph 11.1.3 or 11.1.4, by an  
appropriately qualified medical practitioner,

appointed in either case by the Board to assist it in the exercise of its  
functions under paragraphs 11.1 to 11.3 and that person produces, on  
request, written evidence that he is authorised by the Board to make  
such an inquiry on its behalf.

## **Schedule 5**

### **Patients**

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

1.1 Except where specifically stated otherwise in respect of particular Services, the Contractor shall provide Services under this Agreement to:

- 1.1.1 Registered Patients;
- 1.1.2 Temporary Residents;
- 1.1.3 persons to whom the Contractor is required to provide emergency or immediately necessary treatment;
- 1.1.4 any person for whom the Contractor is responsible under regulation 30 of the National Health Service (General Medical Services Contracts) Regulations 2004 (“the GMS Contracts Regulations”);
- 1.1.5 any other person to whom the Contractor is responsible under arrangements made with another Contractor; and
- 1.1.6 any other person to whom the Contractor has agreed to provide Services under this Agreement.

#### **2 Practice Area**

2.1 The area in respect of which persons resident in it will, subject to any other terms of this Agreement relating to Patient registration, be entitled to register with the Contractor, or seek acceptance by the Contractor as a Temporary Resident, is the “Practice Area”.

**Outer boundary area<sup>20</sup>**

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<sup>20</sup> Clauses 2.2 to 2.4 must be included and clause 7.2.2 amended only where the parties agree there is to be an outer boundary area

- 2.2 The area, other than the area referred to in paragraph 2.1, which is to be known as the outer boundary area is [ ].
- 2.3 Where a patient moves into the outer boundary area referred to in paragraph 2.2 and wishes to remain on the Contractor's List of Patients, the Patient may remain on that list if the Contractor so agrees, notwithstanding the Patient no longer resides in the area referred to in paragraph 2.1.
- 2.4 Where a patient remains on the Contractor's List of Patients as a consequence of clause 2.3, the outer boundary area is to be treated as part of the Practice Area for the purposes of the application of any other terms and conditions of this Agreement in respect of that Patient.

### **3 List of Patients**

- 3.1 The Contractor's List of Patients is [open/closed]<sup>21</sup>.
- 3.2 The Board shall prepare and keep up to date a list of the Patients:
- 3.2.1 who have been accepted by the Contractor for inclusion in its List of Patients under paragraph 5 who have not subsequently been removed from that list under paragraphs 9 to 15; and
  - 3.2.2 who have been assigned to the Contractor under paragraphs 22 and 23 and whose assignment has not subsequently been rescinded.

### **4 Patients aged 75 and over: accountable GP**

- 4.1 A Contractor must ensure that for each of its Registered Patients aged seventy five (75) and over there is assigned an Accountable GP.
- 4.2 The Accountable GP must:

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<sup>21</sup> The Agreement must specify whether, at the date the Agreement comes into force, the Contractor's list of patients will be open or closed. Please delete as appropriate. This clause is required by regulation 11(1)(e) of the Regulations

- 4.2.1 take lead responsibility for ensuring that any Services which the Contractor is required to provide under this Agreement are, to the extent that their provision is considered necessary to meet the needs of the Patient, delivered to the Patient;
- 4.2.2 take all reasonable steps to recognise and appropriately respond to the physical and psychological needs of the Patient in a timely manner;
- 4.2.3 ensure that the Patient receives a health check if, and within a reasonable period after, one has been requested; and
- 4.2.4 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.

4.3 The Contractor must:

- 4.3.1 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;
- 4.3.2 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
- 4.3.3 where the Practice considers it to be necessary, assign a replacement Accountable GP to the Patient and give notice to the Patient accordingly.

4.4 The Contractor must comply with the requirement in paragraph 4.3.1:

4.4.1 in the case of any person who is included in the Contractor's List of Patients immediately before 1st April 2014 and:

4.4.1.1 is aged seventy five (75) or over on or before that date, by 30 June 2014; or

4.4.1.2 who attains the age of seventy five (75) after that date, within twenty one (21) days from the date on which that person attained that age; or

4.4.2 in the case of any person aged seventy five (75) or over who is accepted by the Contractor as a Registered Patient on or after 1st April 2014, within twenty one (21) days from the date on which that person is so accepted.

4.5 In paragraphs 4.1 to 4.5, "health check" 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.

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

5.1 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 its Practice Area or included, at the time of that application, in the List of Patients of another Contractor or Contractor of primary medical services.

5.2 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 its Practice Area or included, at the time of that application, in the List of Patients of another Contractor or Contractor of primary medical services.

- 5.3 Subject to paragraph 5.4, an application for inclusion in the Contractor's List of Patients shall be made by delivering to the Contractor's 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.
- 5.4 An application may be made:
- 5.4.1 on behalf of any Child;
    - 5.4.1.1 by either Parent, or in the absence of both Parents, the guardian or other adult who has care of the Child;
    - 5.4.1.2 by a person duly authorised by a local authority to whose care the Child has been committed under the Children Act 1989; or
    - 5.4.1.3 by a person duly authorised by a voluntary organisation by which the Child is being accommodated under the provisions of that Act;
  - 5.4.2 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.
- 5.5 Where the Contractor has accepted an application for inclusion in its List of Patients, it shall notify the Board in Writing as soon as possible.
- 5.6 On receipt of a notice under paragraph 5.5, the Board shall include that person in the Contractor's List of Patients from the date on which the notice is received, and notify the applicant (or, in the case of a Child or an adult who lacks capacity, the person making the application on their behalf) of the acceptance in Writing.

## **6 Temporary Residents**

6.1 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:

6.1.1 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

6.1.2 moving from place to place and not for the time being resident in any place.

6.2 For the purposes of paragraph 6.1, 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.

6.3 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.

6.4 At the end of three (3) months, or on such earlier date as its responsibility for the Temporary Resident has come to an end, the Contractor shall notify the Board in Writing of any person whom it accepted as a Temporary Resident.

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

7.1 The Contractor shall only refuse an application made under paragraphs 5 or 6 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

- 7.2 The reasonable grounds referred to in paragraph 7.1 may, in the case of applications made under paragraph 5, include the ground that the applicant:
- 7.2.1 does not live in the Contractor's Practice Area; or
  - 7.2.2 lives in the outer boundary area.
- 7.3 If the Contractor refuses an application made under paragraph 5 or 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.
- 7.4 The Contractor shall keep a written record of refusals of applications made under paragraph 5 and of the reasons for them and shall make this record available to the Board on request.
- 8 Patient preference of practitioner**
- 8.1 Where the Contractor has accepted an application for inclusion in its List of Patients, it shall:
- 8.1.1 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
  - 8.1.2 record in Writing any such preference expressed by or on behalf of the Patient.
- 8.2 The Contractor shall endeavour to comply with any preference expressed under paragraph 8.1 but need not do so if the preferred performer has reasonable grounds for refusing to provide Services to the Patient, or does not routinely perform the Service in question under this Agreement on behalf of the Contractor.

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

- 9.1 The Contractor shall notify the Board in Writing of any request for removal from its List of Patients received from a Registered Patient.
- 9.2 Where the Board receives notification from the Contractor under paragraph 9.1, 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.
- 9.3 A removal under paragraph 9.2 shall take effect:
- 9.3.1 on the date on which the Board receives notification of the registration of the person with another Contractor of Essential Services (or their equivalent); or
  - 9.3.2 fourteen (14) days after the date on which the notification or request made under paragraph 9.1 or 9.2 respectively is received by the Board,
- whichever is the sooner.
- 9.4 The Board shall, as soon as practicable, notify in Writing the Patient and 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 paragraph 9.3.
- 9.5 In paragraphs 9, 10.1.2, 10.8, 11.6, 11.7, 13.1, 14.5 and 16.3 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:
- 9.5.1 in the case of a Patient who is a Child, a Parent or other person referred to in paragraph 5.4.1; or
  - 9.5.2 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.

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

10.1 Subject to paragraph 11, where the Contractor has reasonable grounds for wishing a Patient to be removed from its List of Patients which do not relate to the Patient's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor shall:

10.1.1 notify the Board in Writing that it wishes to have the Patient removed; and

10.1.2 subject to paragraph 10.2, notify the Patient, subject to paragraph 9.5, in Writing of its specific reasons for requesting removal.

10.2 Where in the reasonable opinion of the Contractor the circumstances of the removal are such that it is not appropriate for a more specific reason to be given, and, there has been an irrevocable breakdown in the relationship between the Patient and the Contractor, the reason given under paragraph 10.1 may consist of a statement that there has been such a breakdown.

10.3 Before the Contractor can request a removal in accordance with paragraph 10.1, it shall, except where the reason for removal relates to a change of address, issue a warning, within the period of twelve (12) months prior to the request to the Board, to the Patient that he is at risk of removal unless:

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

10.3.2 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, the Contractor's Staff or any other person.

- 10.4 The Contractor shall record in Writing the date of any warning given in accordance with paragraph 10.3 and the reasons for giving such a warning as explained to the Patient or the reason why no such warning was given.
- 10.5 The Contractor shall keep a written record of removals under this paragraph 10 which shall include the reason for removal given to the Patient, the circumstances of the removal and in cases where paragraph 10.2 applies, the grounds for a more specific reason not being appropriate, and the Contractor shall make this record available to the Board on request.
- 10.6 A removal requested in accordance with paragraph 10.1 shall, subject to paragraph 10.7, take effect from the date on which the Board receives notification of the registration of the person with another Contractor of Essential Services or their equivalent, or the eighth (8<sup>th</sup>) day after the Board receives the notice, referred to in paragraph 10.1.1, whichever is the sooner.
- 10.7 Where, on the date on which the removal would take effect under paragraph 10.6, the Contractor is treating the Patient at intervals of less than seven (7) days, the Contractor shall inform the Board in Writing of that fact and the removal shall take effect on the eighth (8<sup>th</sup>) day after the Board receives notification from the Contractor that the person no longer needs such treatment, or on the date on which the Board receives notification of the registration of the person with another Contractor of Essential Services, whichever is the sooner.
- 10.8 The Board shall notify in Writing, subject to paragraph 9.5, the Patient and 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 paragraph 10.6 or 10.7.

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

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

- 11.1.1 the Patient has committed an act of violence against any of the persons specified in paragraph 11.2 or behaved in such a way that any such person has feared for his safety; and
  - 11.1.2 it has reported the incident to the police,
- the Contractor shall notify the Board in accordance with paragraph 11.3.
- 11.2 The persons referred to in paragraph 11.1 are:
  - 11.2.1 any party to this Agreement who is an individual;
  - 11.2.2 any member of the Contractor's Staff; or
  - 11.2.3 any other person present:
    - 11.2.3.1 on the Contractor's Premises, or
    - 11.2.3.2 in the place where Services were provided to the Patient under this Agreement.
- 11.3 Notification under paragraph 11.1 may be given by any means including telephone or fax but if not given in Writing shall subsequently be confirmed in Writing within seven (7) days (and for this purpose a faxed notification is not a written one).
- 11.4 The Board shall acknowledge in Writing receipt of a request from the Contractor under paragraph 11.1.
- 11.5 A removal requested in accordance with paragraph 11.1 shall take effect at the time the Contractor makes the telephone call to the Board, or sends or delivers the notification to the Board.
- 11.6 Where, pursuant to paragraph 11.1 to 11.8, the Contractor has notified the Board that it wishes to have a Patient removed from its List of Patients with immediate effect, it shall, subject to paragraph 9.5, inform the Patient concerned unless:
  - 11.6.1 it is not reasonably practicable for it to do so; or
  - 11.6.2 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, the Contractor's Staff or any other person.

- 11.7 Where the Board has removed a Patient from the Contractor's List of Patients in accordance with paragraph 11.5, subject to paragraph 9.5, it shall give written notice of the removal to that Patient.
- 11.8 Where a Patient is removed from the Contractor's List of Patients in accordance with paragraphs 11.1 to 11.8, the Contractor shall record in the Patient's medical records that the Patient has been removed under this paragraph and the circumstances leading to his removal.

## **12 Removals from the List of Patients registered elsewhere**

- 12.1 The Board must remove a Patient from the Contractor's List of Patients if that Patient has subsequently been registered with another Contractor of Essential Services (or their equivalent) within England or it has received notice from a Local Health Board, a Health Board or a Health and Social Services Board that the Patient has subsequently been registered with a Contractor of Essential Services (or their equivalent) outside England.
- 12.2 A removal in accordance with paragraph 12.1 shall take effect on the date on which the Board receives notification of the registration of the person with the new Contractor or with the consent of the Board, on such other date as has been agreed between the Contractor and the new Contractor.
- 12.3 The Board shall notify the Contractor in Writing of persons removed from its List of Patients under paragraph 12.1.

## **13 Removals from the List of Patients who have moved**

- 13.1 Subject to paragraph 13.2, where the Board is satisfied that a person on the Contractor's List of Patients no longer resides in that Contractor's Practice Area, the Board shall, subject to paragraph 9.5:

- 13.1.1 inform the Patient and the Contractor that the Contractor is no longer obliged to visit and treat the Patient; and
  - 13.1.2 advise the Patient in Writing 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 Contractor of Essential Services (or their equivalent); and
  - 13.1.3 inform him that if, after the expiration of thirty (30) days from the date of advice mentioned in paragraph 13.1.2, he has not acted in accordance with the advice and informed it accordingly, the Board will remove him from the Contractor's List of Patients.
- 13.2 If, at the expiration of the period of thirty (30) days referred to in paragraph 13.1.3, the Board has not been notified of the action taken, it shall remove the Patient from the Contractor's List of Patients and, inform him and the Contractor accordingly.
- 13.3 Where the address of a Patient who is on the Contractor's list is no longer known to the Board, the Board shall:
  - 13.3.1 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
  - 13.3.2 at the end of that period, remove the Patient from the Contractor's List of Patients unless, within that period, the Contractor satisfies the Board that it is still responsible for providing Essential Services to that Patient.

## **14 Removals from the List of Patients absent from the United Kingdom etc.**

- 14.1 The Board shall remove a Patient from the Contractor's List of Patients where it receives notification that that Patient:
- 14.1.1 intends to be away from the United Kingdom for a period of at least three (3) months;
  - 14.1.2 is in the Armed Forces of the Crown (except in the case of a patient to whom paragraph 31 applies;
  - 14.1.3 is serving a prison sentence of more than two (2) years or sentences totalling in the aggregate more than that period;
  - 14.1.4 has been absent from the United Kingdom for a period of more than three (3) months; or
  - 14.1.5 has died.
- 14.2 A removal in accordance with paragraph 14.1 shall take effect:
- 14.2.1 in the cases referred to in paragraphs 14.1.1 to 14.1.3 from the date of the departure, enlistment or imprisonment or the date on which the Board first receives notification of the departure, enlistment or imprisonment whichever is the later; or
  - 14.2.2 in the cases referred to in paragraphs 14.1.4 and 14.1.5 from the date on which the Board first receives notification of the absence or death.
- 14.3 The Board shall notify the Contractor in Writing of Patients removed from its List of Patients under paragraph 14.1.
- 14.4 The Board shall remove from the Contractor's List of Patients a Patient who has been accepted as a Temporary Resident by another Contractor or other Contractor of Essential Services (or their equivalent) where it is satisfied, after due inquiry:
- 14.4.1 that the Patient's stay in the place of temporary residence has exceeded three (3) months; and

14.4.2 that the Patient has not returned to his normal place of residence or any other place within the Contractor's Practice Area.

14.5 The Board shall notify the Contractor, and where practicable, the Patient, subject to paragraph 9.5, in Writing of a removal under paragraph 14.4.

14.6 A notification to the Patient under paragraph 14.5 shall inform him of:

14.6.1 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

14.6.2 the name, postal and email address of the Board.

## **15 Removals from a list of pupils etc. of a school**

15.1 Where the Contractor provides Essential Services under this Agreement to persons on the grounds that they are pupils at or staff or residents of a school, the Board shall remove from the Contractor's List of Patients any such persons who do not appear on particulars of persons who are pupils at or staff or residents of that school provided by that school.

15.2 Where the Board has made a request to a school to provide the particulars mentioned in clause 15.1 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 or residents of, that school.

15.3 The Board shall notify the Contractor in Writing of Patients removed from its List of Patients under paragraph 15.1.

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

16.1 Where the Contractor:

- 16.1.1 has received an application for the provision of medical services other than Essential Services:
  - 16.1.1.1 from a person who is not included in its List of Patients,
  - 16.1.1.2 from a person whom it has not accepted as a Temporary Resident, or
  - 16.1.1.3 on behalf of a person mentioned in paragraphs 16.1.1.1 and 16.1.1.2, from one of the persons specified in paragraph 5.4; and
- 16.1.2 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 paragraph 16.2.

16.2 The circumstances referred to in paragraph 16.1 are:

- 16.2.1 the Patient informs the Contractor that he no longer wishes it to be responsible for provision of the service in question;
- 16.2.2 in cases where the Contractor has reasonable grounds for terminating its responsibility which do not relate to the Patient's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor informs the Patient that it no longer wishes to be responsible for providing him with the service in question; or
- 16.2.3 it comes to the notice of the Contractor that the Patient:
  - 16.2.3.1 no longer resides in the area for which the Contractor has agreed to provide the service in question; or

16.2.3.2 is no longer included in the List of Patients of another Contractor to whose Registered Patients the Contractor has agreed to provide the service in question.

16.3 If the Contractor wishes to terminate its responsibility for a Patient under paragraph 16.2.2, it shall notify the Patient, subject to paragraph 9.5, of the termination and the reason for it.

16.4 The Contractor shall keep a written record of terminations under paragraphs 16.1 to 16.5 and of the reasons for them and shall make this record available to the Board on request.

16.5 A termination under paragraph 16.2.2 shall take effect:

16.5.1 from the date on which the notice is given where the grounds for termination are those specified in paragraph 11.1; or

16.5.2 in all other cases, fourteen (14) days from the date on which the notice is given.

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

17.1 A Contractor which wishes to close its List of Patients must send a written application ("the Application") to close its list to the Board and the Application must include the following details:

17.1.1 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 and, if any of the options were implemented, the level of success in reducing or extinguishing such difficulties;

17.1.2 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;

- 17.1.3 any discussions between the Contractor and other Contractors in the Practice Area and a summary of the opinion of the other Contractors as to whether the List of Patients should or should not be closed;
  - 17.1.4 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 twelve (12) months;
  - 17.1.5 any reasonable support from the Board which the Contractor considers would enable its List of Patients to remain open or would enable the period of proposed closure to be minimised;
  - 17.1.6 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
  - 17.1.7 any other information which the Contractor considers ought to be drawn to attention of the Board.
- 17.2 The Board must acknowledge receipt of the Application within a period of seven (7) days starting on the date the Application was received by the Board.
- 17.3 The Board must consider the Application and may request such other information from the Contractor which it requires to enable it to consider the Application.
- 17.4 The Board must enter into discussions with the Contractor concerning:
  - 17.4.1 the support which the Board may give the Contractor;  
or
  - 17.4.2 changes which the Board or Contractor may make,to enable the Contractor to keep its List of Patients open.

- 17.5 The Board and Contractor must, throughout the discussions referred to in paragraph 17.4, use its reasonable endeavours to achieve the aim of keeping the Contractor's List of Patients open.
- 17.6 The Board 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 this agreement (if any) to attend any meetings arranged between the Board and Contractor to discuss the Application.
- 17.7 The Board may consult such persons as it appears to the Board as may be affected by the closure of the Contractor's List of Patients, and if it does so, the Board must provide to the Contractor a summary of the views expressed by those consulted in respect of the Application.
- 17.8 The Board must enable the Contractor to consider and comment on all the information before the Board makes a decision in respect of the Application.
- 17.9 A Contractor may withdraw its Application at any time before the Board makes a decision in respect of that Application.
- 17.10 Within a period of twenty one (21) days starting on the date of receipt of the Application (or within such longer period as the parties may agree), the Board must make a decision:
- 17.10.1 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
  - 17.10.2 to reject the Application.
- 17.11 The Board must notify the Contractor of its decision to approve the Application in accordance with paragraph 18, or in the case where the Application is rejected, in accordance with paragraph 19.
- 17.12 A Contractor must not submit more than one application to close its List of Patients in any period of twelve (12) months starting on the date on which the Board makes its decision on the Application unless:
- 17.12.1 paragraph 19 applies; or

- 17.12.2 there has been a change in circumstances of the Contractor which affects its ability to deliver Services under this Agreement.

## **18 Approval of an application to close a List of Patients**

- 18.1 Where the Board approves the application to close a List of Patients, it must:

- 18.1.1 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 paragraph 18.2; and

- 18.1.2 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 this Agreement (if any) and to any person it consulted in accordance with paragraph 17.7.

- 18.2 The closure notice must include:

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

- 18.2.1.1 the period specified in the Application to close the List of Patients; or

- 18.2.1.2 in the case where the Board and 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 twelve (12) months;

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

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

- 18.3 Subject to paragraph 21, a 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.

## **19 Rejection of an application to close a List of Patients**

- 19.1 Where the Board rejects an application to close a List of Patients it must:
- 19.1.1 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
  - 19.1.2 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 this Agreement (if any) and to any person it consulted in accordance with paragraph 17.7.
- 19.2 Subject to paragraph 19.3, if the Board makes a decision to reject a Contractor's application to close its List of Patients, the Contractor must not make a further application until:
- 19.2.1 the end of the period of three (3) months, starting on the date of the decision of the Board to reject; or
  - 19.2.2 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 NHS Dispute Resolution Procedure,
- whichever is the later.
- 19.3 A Contractor may make a further application to close its lists of Patient where there has been a change in the circumstances of the Contractor which affects its ability to deliver services under this Agreement.

## **20 Application for an extension of a closure period**

- 20.1 A 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.
- 20.2 The application to extend the closure period must include:
- 20.2.1 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;
  - 20.2.2 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 twelve (12) months;
  - 20.2.3 details of any reasonable support from the Board 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;
  - 20.2.4 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
  - 20.2.5 any other information which the Contractor considers ought to be drawn to the attention of the Board.
- 20.3 The Board 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 Board.

- 20.4 The Board 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.
- 20.5 The Board may enter into discussions with the Contractor concerning:
- 20.5.1 the support which the Board may give the Contractor;  
or
  - 20.5.2 changes which the Board or Contractor may make,
- to enable the Contractor to re-open its List of Patients.
- 20.6 Within a period of fourteen (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 Board must make a decision.
- 20.7 The Board 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.
- 20.8 Where the Board approves the application to extend the closure period, it must:
- 20.8.1 notify the Contractor of its decision in Writing and the notification ("the extended closure notice") shall include the details referred to in paragraph 20.9; and
  - 20.8.2 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 Services under this Agreement (if any) and to any person it consulted in accordance with paragraph 17.7.
- 20.9 The extended closure notice must include:
- 20.9.1 the period of time for which the Contractor's List of Patients will remain closed which must be:

- 20.9.1.1 the period specified in the application to extend the closure period; or
  - 20.9.1.2 in the case where the Board and 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 twelve (12) months;

20.9.2 the date from which the extended closure period is to take effect; and

20.9.3 the date on which the List of Patients is to re-open.

20.10 Where the Board rejects an application to extend the closure period it must:

20.10.1 notify the Contractor of its decision in Writing and the notification must include the reasons for the rejection of the application; and

20.10.2 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 this Agreement (if any).

20.11 Where an application for an extension of the closure period is made in accordance with paragraphs 20.1 and 20.2, the List of Patients will remain closed pending:

20.11.1 the determination by the Board of the application for an extension of the closure period; or

20.11.2 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.

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

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

## **22 Assignment of Patients to lists: open lists**

- 22.1 The Board may, subject to paragraph 24, assign a new Patient to the Contractor whose List of Patients is open.
- 22.2 In paragraphs 22.1 and 22.2, paragraphs 23 and 25 to 27, a “new” Patient means a person who:
- 22.2.1 has been refused inclusion in a List of Patients or has not been accepted as a Temporary Resident by a Contractor; and
  - 22.2.2 wishes to be included in the List of Patients of a Contractor in whose area, as specified in accordance with regulation 11(1A) of the PMS Regulations, that person resides.

## **23 Assignment of Patients to lists: closed lists**

- 23.1 The Board may not assign a new Patient to the Contractor where it has closed its List of Patients except in the circumstances specified in paragraph 23.2.
- 23.2 The Board may, subject to paragraph 24, assign a new Patient to the Contractor when it has closed its List of Patients if the Contractor’s Premises are within the Board’s area, and:
- 23.2.1 the assessment panel has determined under paragraph 25.7 that Patients may be assigned to the Contractor, and that determination has not been overturned either by a determination of the Secretary

of State under paragraph 26.13 or (where applicable) by a court; and

- 23.2.2 the Board has entered into discussions with the Contractor regarding the assignment of a Patient if such discussions are required under paragraph 27.

## **24 Factors relevant to assignments**

24.1 In making an assignment to the Contractor under paragraphs 22 or 23, the Board must have regard to:

- 24.1.1 the wishes and circumstances of the Patient to be assigned;
- 24.1.2 the distance between the Patient's place of residence and the Contractor's Practice Premises;
- 24.1.3 any request made by any Contractor to remove the Patient from its List of Patients within the preceding period of 6 months starting on the date on which the application for assignment is received by the Board;
- 24.1.4 whether, during the preceding period of six (6) months starting on the date on which the application for assignment is received by the Board, the Patient has been removed from a List of Patients on the grounds referred to in:
  - 24.1.4.1 paragraph 10 (removals from the list at the request of the Contractor);
  - 24.1.4.2 paragraph 11 (removals from the List of Patients who are violent); or
  - 24.1.4.3 the equivalent provisions to those paragraphs in relation to arrangements made under section 83(2) of the 2006 Act or under a

contract made in accordance with the General  
Medical Services Contracts Regulations;

24.1.5 in a case to which paragraph 24.1.4.2 applies (or the  
equivalent provisions as mentioned in paragraph  
24.1.4.3 apply), whether the Contractor has  
appropriate facilities to deal with such Patients; and

24.1.6 such other matters as the Board considers relevant.

## **25 Assignments to closed lists: determination of the assessment panel**

25.1 If the Board wishes to assign new Patients to Contractors which have  
closed their lists of Patients, it must prepare a proposal to be  
considered by the assessment panel.

25.2 The Board must notify in Writing:

25.2.1 Contractors, including those Contractors 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 General Medical  
Services Contracts Regulations, which:

25.2.1.1 have closed their Lists of Patients; and

25.2.1.2 may, in the opinion of the Board, be affected  
by the determination of the assessment panel;  
and

25.2.2 the Local Medical Committee (if any) for the area in  
which the Contractors referred to in paragraph 25.2.1  
provide Essential Services (or their equivalent),

that it has referred the matter to the assessment panel.

25.3 The Board must ensure the assessment panel is appointed to consider  
and determine the proposal made under paragraph 25.1, and the

composition of the assessment panel must be as described in paragraph 25.4.

- 25.4 The members of the assessment panel must be:
- 25.4.1 a member of the Board who is a director;
  - 25.4.2 a Patient representative who is a member of the Local Health and Wellbeing Board or Local Healthwatch organisation; and
  - 25.4.3 a member of a Local Medical Committee but not a member the Local Medical Committee formed for the area in which the Contractors, who may be assigned Patients as a consequence of the panel's determination, provide Essential Services.
- 25.5 In reaching its determination, the assessment panel must have regard to relevant factors including:
- 25.5.1 whether the Board 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 Contractor with a closed list; and
  - 25.5.2 the workload of those Contractors likely to be affected by any decision to assign such Patients to their List of Patients.
- 25.6 The assessment panel must reach a determination within a period of twenty eight (28) days starting on the date on which the assessment panel was appointed.
- 25.7 The assessment panel:
- 25.7.1 must determine whether the Board may assign Patients to a Contractor which has a closed List of Patients; and
  - 25.7.2 if it so determines that the Board may make such an assignment, must determine in the case where there is

more than one Contractor, those Contractors to which Patients may be assigned.

25.8 The assessment panel may determine that the Board may assign new Patients to Contractors other than any of the Contractors specified in its proposals under paragraph 25.1, as long as the Contractors were notified under paragraph 25.2.1.

25.9 The assessment panel's determination must include its comments on the matters referred to in paragraph 25.5, and must be notified in Writing to those Contractors referred to in paragraph 25.2.1.

## **26 Assignments to closed lists: NHS Dispute Resolution Procedure relating to determinations of the assessment panel**

26.1 Where an assessment panel makes a determination under paragraph 25.7 that the Board may assign new Patients to Contractors which have closed their lists of Patients, any Contractor specified in that determination may refer the matter to the Secretary of State to review the determination of the assessment panel.

26.2 Where a matter is referred to the Secretary of State in accordance with paragraph 26.1, it shall be reviewed in accordance with the procedure specified in paragraphs 26.3 to 26.17.

26.3 Where more than one Contractor specified in the determination in accordance with paragraph 25.7 wishes to refer the matter for dispute resolution, those Contractors may, if they all agree, refer the matter jointly, and in that case the Secretary of State shall review the matter in relation to those Contractors together.

26.4 Within the period of seven (7) days beginning with the date of the determination by the assessment panel in accordance with paragraph 25.7, the Contractor (or Contractors) shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by:

- 26.4.1 the names and addresses of the parties to the dispute;
  - 26.4.2 a copy of this Agreement (or agreements); and
  - 26.4.3 a brief statement describing the nature and circumstances of the dispute.
- 26.5 Within the period of seven (7) days beginning with the date on which the matter was referred to him, the Secretary of State shall:
  - 26.5.1 give to the parties notice in Writing that he is dealing with the matter; and
  - 26.5.2 include with the notice a written request to the parties to make in Writing within a specified period any representations which they may wish to make about the dispute.
- 26.6 The Secretary of State shall give, with the notice given under paragraph 26.5, to the party other than the one which referred the matter to dispute resolution a copy of any document by which the dispute was referred to dispute resolution.
- 26.7 The Secretary of State shall, upon receiving any representations from a party, give a copy of them to the other party, and shall in each case request (in Writing) a party to which a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.
- 26.8 For the purpose of assisting it in its consideration of the matter, the Secretary of State may:
  - 26.8.1 invite representatives of the parties to appear before him to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which he wishes them to give special consideration; or

- 26.8.2           consult other persons whose expertise he considers will assist him in his consideration of the dispute.
- 26.9           Where the Secretary of State consults another person under paragraph 26.8.2, he shall notify the parties accordingly in Writing and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the parties such opportunity as he considers reasonable in the circumstances to make observations on those results.
- 26.10          In considering the dispute, the Secretary of State shall consider:
- 26.10.1       any written representations made in response to a request under paragraph 26.5.2, but only if they are made within the specified period;
  - 26.10.2       any written observations made in response to a request under paragraph 26.7, but only if they are made within the specified period;
  - 26.10.3       any oral representations made in response to an invitation under paragraph 26.8.1;
  - 26.10.4       the results of any consultation under paragraph 26.8.2; and
  - 26.10.5       any observations made in accordance with an opportunity given under paragraph 26.9.
- 26.11          Subject to the other provisions of paragraphs 26.1 to 26.17 and to any agreement by the parties, the Secretary of State shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.
- 26.12          In paragraphs 26.1 to 26.17, "specified period" means such period as the Secretary of State shall specify in the request, being not less than one (1), nor more than two (2), weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if the

period for determination of the dispute has been extended in accordance with paragraph 26.16, extend any such period (even after it has expired) and, where he does so, a reference in paragraphs 26.1 to 26.17 to the specified period is to the period as so extended.

- 26.13 Subject to paragraph 26.16, within the period of twenty one (21) days beginning with the date on which the matter was referred to him, the Secretary of State shall determine whether the Board may assign Patients to Contractors which have closed their lists of Patients; and if he determines that the Board may make such assignments, he shall also determine those Contractors to which Patients may be assigned.
- 26.14 The Secretary of State may not determine that Patients may be assigned to a Contractor which was not specified in the determination of the assessment panel under paragraph 25.7.
- 26.15 In the case of a matter referred jointly by Contractors in accordance with paragraph 26.3, the Secretary of State may determine that Patients may be assigned to one, some or all of the Contractors which referred the matter.
- 26.16 The period of twenty one (21) days referred to in paragraph 26.13 may be extended (even after it has expired) by a further specified number of days if an agreement to that effect is reached by:
- 26.16.1 the Secretary of State;
  - 26.16.2 the Board; and
  - 26.16.3 the Contractor (or Contractors) which referred the matter to dispute resolution.
- 26.17 The Secretary of State shall record his determination, and the reasons for it, in Writing and shall give notice of the determination (including the record of the reasons) to the parties.

## **27 Assignments to closed lists: assignments of Patients**

- 27.1 Before the Board may assign a new Patient to the Contractor, it must, subject to paragraph 27.3, enter into discussions with the Contractor regarding additional support that the Board can offer the Contractor, and the Board shall use its best endeavours to provide appropriate support.
- 27.2 In the discussions referred to in paragraph 27.1, both parties shall use reasonable endeavours to reach agreement.
- 27.3 The requirement in paragraph 27.1 to enter into discussions applies:
- 27.3.1 to the first assignment of a Patient to the Contractor;  
and
  - 27.3.2 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 paragraph 27.1 took place.

## **28 Patient Participation**

- 28.1 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:
- 28.1.1 obtaining the views of Patients who have attended the Contractor's Practice about the services delivered by the Contractor; and
  - 28.1.2 enabling the Contractor to obtain feedback from its Registered Patients about those services.
- 28.2 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.

- 28.3 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.
- 28.4 The Contractor must:
- 28.4.1 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
  - 28.4.2 review any feedback received about the services delivered by the Contractor, whether pursuant to sub-paragraph 28.4.1 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.
- 28.5 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.
- 28.6 In this paragraph 28 “financial year” means the 12 month period beginning on 1st April each year and ending on 31st March the following year.

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

- 29.1 Where under paragraph 3.2 a Patient has been:
- 29.1.1 accepted onto the Contractor's List of Patients; or
  - 29.1.2 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.

29.2 The Contractor must comply with the requirement in paragraph 29.1 by screening the Patient using either one of the two shortened versions of the World Health Organisation Alcohol Use Disorders Identification (“AUDIT”) questionnaire<sup>22</sup> which are known as:

29.2.1 FAST (which has four questions); or

29.2.2 AUDIT-C (which has three questions).

29.3 Where, under paragraph 29.2, the Contractor identifies a Patient as positive using either of the shortened versions of the AUDIT questionnaire specified in paragraph 29.2, 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.

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

29.4.1 offer the Patient appropriate advice and lifestyle counselling;

29.4.2 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

29.4.3 in any case where the Patient is identified as a dependent drinker, offer the Patient a referral to such

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<sup>22</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

specialist services as are considered clinically appropriate to meet the needs of the Patient.

29.5 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:

- 29.5.1 assessed for anxiety and depression;
- 29.5.2 offered screening for anxiety or depression; and
- 29.5.3 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.

29.6 The Contractor must make relevant entries, including the results of the completed questionnaire referred to in paragraph 29.2, in the Patient's record that the Contractor is required to keep under clause 29.

## **30 Accountable GPs**

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

30.2 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.

30.3 The Contractor must:

- 30.3.1 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;

30.3.2 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

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

30.4 The Contractor must comply with the requirement in sub-paragraph 30.3.1:

30.4.1 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

30.4.2 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.

30.5 The requirement in clause 30.1 does not apply to:

30.5.1 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

30.5.2 any other patient of the Contractor if the Contractor has been informed that the Patient does not wish to have an Accountable GP.

30.6 Where, under sub-paragraph 30.3.1, 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.

30.7 Where, under sub-paragraph 30.5.2, 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 29.

30.8 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:

30.8.1 on the Contractor's practice website (if it has one); and

30.8.2 in the Contractor's practice leaflet.

30.9 Where the Contractor does not have a practice website, the Contractor must include the information referred to in paragraph 30.8 on its profile page on NHS Choices<sup>23</sup>.

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

31.1 The Contractor may, if its List of Patients is open, include a person to whom clause 31.2 applies in its List of Patients for a period of up to two years and paragraph 14.1.2 does not apply in respect of any person included in the Contractor's List of Patients by virtue of paragraph 31.

31.2 This sub-paragraph applies to a person who is:

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

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

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<sup>23</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

- 31.3 Where the Contractor has accepted a person to whom paragraph 31.2 applies onto its List of Patients, the Contractor must:
- 31.3.1 obtain a copy of the patient's medical record or a summary of that record from Defence Medical Services; and
  - 31.3.2 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.
- 31.4 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:
- 31.4.1 notify Defence Medical Services in Writing that its responsibility for that person has come to an end; and
  - 31.4.2 update the Patient's medical record, or summary of that record, and return it to Defence Medical Services.
- 31.5 In this paragraph 31, "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.

## **Schedule 6**

### **NHS Dispute Resolution Procedure**

The NHS Dispute Resolution Procedure that the Parties shall follow shall be as follows:

- 1 In the case of any dispute arising out of or in connection with this Agreement (for the avoidance of any doubt, in this Schedule 6, “arising out of or in connection with this Agreement” includes but is not limited to any dispute arising out of or in connection with the termination of this Agreement), the Contractor and the Board must make every reasonable effort to communicate and co-operate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS Dispute Resolution Procedure set out in paragraphs 2 to 12 (inclusive) in this Schedule 6.
- 2 In the case of any dispute arising out of or in connection with the Agreement which is referred to the Secretary of State in accordance with section 9 of the 2006 Act:
  - 2.1 Any party wishing to refer a dispute as mentioned in accordance with the NHS Dispute Resolution Procedure shall send to the Secretary of State a written request for dispute resolution which shall include or be accompanied by:
    - 2.1.1 the names and addresses of the Parties to the dispute;
    - 2.1.2 a copy of the Agreement; and
    - 2.1.3 a brief statement describing the nature and circumstances of the dispute.
  - 2.2 any request submitted to the Secretary of State in accordance with this paragraph 2 must be submitted within a period of three (3) years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

- 3 Before reaching a decision as to who should determine the dispute, under section 9 of the 2006 Act, the Secretary of State shall, within the period of 7 days beginning with the date on which a matter was referred to him, send a written request to the Parties to make in Writing, within a specified period (for the avoidance of any doubt, in this Schedule 6, “specified period” means such period as the Secretary of State shall specify in the request, being not less than two (2) or more than four (4), weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if he considers that there is a good reason for doing so, extend any such period (even after it has expired) and, where he does so, a reference in this Schedule to the specified period is to the specified period so extended), any representations which they may wish to make about the matter.
- 4 The Secretary of State shall give, with the notice given under paragraph 3, to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.
- 5 The Secretary of State shall give a copy of any representations received from a party to the other party, and shall in each case request (in Writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.
- 6 Following receipt of any representations from the Parties or, if earlier, at the end of the period for making such representations specified in the request sent under paragraphs 3 or 5, the Secretary of State shall, if he decides to appoint a person or persons to hear the dispute:
  - 6.1 inform the parties in Writing of the name of the person or persons whom he has appointed; and
  - 6.2 pass to the person or persons so appointed any documents received from the Parties under or pursuant to paragraphs 2(a), 3 or 5.

- 7 For the purpose of assisting him in his consideration of the matter, the Adjudicator may:
  - 7.1 invite representatives of the Parties to appear before him to make oral representations either together or, with the agreement of the Parties, separately, and may in advance provide the Parties with a list of matters or questions to which he wishes them to give special consideration; or
  - 7.2 consult other persons whose expertise he considers will assist him in his consideration of the matter.
- 8 Where the Adjudicator consults another person under paragraph 7(b), he shall notify the parties accordingly in Writing and, where he considers that the interests of any party might be substantially affected by the result of the consultation, he shall give to the Parties such opportunity as he considers reasonable in the circumstances to make observations on those results.
- 9 In considering the matter, the Adjudicator shall consider:
  - 9.1 any written representations made in response to a request under paragraph 3, but only if they are made within the specified period;
  - 9.2 any written observations made in response to a request under paragraph 5, but only if they are made within the specified period;
  - 9.3 any oral representations made in response to an invitation under sub-paragraph 7(a);
  - 9.4 the results of any consultation under paragraph 7(b); and
  - 9.5 any observations made in accordance with an opportunity given under paragraph 8.
- 10 Subject to the other provisions of this paragraph and paragraph 11 and to any agreement by the Parties, the Adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

- 11        The Adjudicator shall record his determination and the reasons for it in Writing and shall give notice of the determination (including the record of the reasons) to the Parties.
- 12        Where the Adjudicator makes a direction as to payments under section 9 of the 2006 Act (as it has effect as a result of regulation 9), that direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

**Schedule 7**  
**Premises**

Address: [insert your practice address/es]

Service Environment: [briefly describe, eg number of consulting rooms, reception area shared or exclusive etc]

DRAFT LEASE/UNDERLEASE [describe whether the practice holds lease/underlease]

Remedial works [describe if any need to be done]

Out of Hours provisions [describe whether the practice has opted in/out and subcontracting arrangements where applicable]:

## **Schedule 8**

### **Complaints Requirements**

The parties shall comply with their respective obligations arising pursuant to the Complaints Regulations. In the event of any conflict between the provisions of this Agreement and the requirements of the Complaints Regulations, the provisions of the Complaints Regulations shall apply.

The complaints procedure that the Contractor shall follow when following its own complaints procedure shall be as follows:

- 1           The Contractor shall take all reasonable steps to ensure that:
  - 1.1           the complaints procedure is accessible to all Patients; and
  - 1.2           Patients are aware of:
    - 1.2.1       the name of the Contractor Complaints Manager;
    - 1.2.2       the complaints procedure;
    - 1.2.3       the role of the Board and other bodies in relation to complaints about services under the Agreement; and
    - 1.2.4       their right to assistance with any complaint from the Independent Complaints Advocacy Service.
- 2           A complaint may be made by a Patient or former Patient who is receiving or has received Services under this Agreement, or with his/her consent, on behalf of that Patient.
- 3           Where the Patient or former Patient is a Child, a complaint may be made:
  - 3.1           by either Parent, or in the absence of both Parents, the guardian or other adult who has care of the Child;
  - 3.2           by a person duly authorised by a local authority to whose care the Child has been committed under the provisions of the Children Act 1989; or

- 3.3 by a person duly authorised by a voluntary organisation by which the Child is being accommodated under the provisions of the Children Act 1989; or
  - 3.4 where the Patient or former Patient is incapable of making a complaint, by a relative or other adult who has an interest in his welfare.
- 4 Where a Patient or former Patient has died a complaint may be made by a relative or other adult who had an interest in his welfare or, where the Patient falls within paragraph 3.2 or 3.3, by the relevant authority or voluntary organisation.
- 5 Subject to paragraph 6, the period for making a complaint is:
  - 5.1 six (6) months from the date on which the matter which is the subject of the complaint occurred; or
  - 5.2 six (6) months from the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than twelve (12) months after the date on which the matter which is the subject of the complaint occurred.
- 6 Where a complaint is not made during the period specified in paragraph 5, it shall be referred to the person referred to the Contractor Complaints Manager and if he is of the opinion that:
  - 6.1 having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and
  - 6.2 notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly,

the complaint shall be treated as if it had been received during the period specified in paragraph 6.

- 7 All complaints must be:
  - 7.1 either made or recorded in Writing;
  - 7.2 acknowledged in Writing within the period of three (3) Business Days beginning with the day on which the complaint was received or, where that is not possible, as soon as reasonably practicable; and
  - 7.3 properly investigated.
- 8 Within the period of ten (10) Business Days beginning with the day on which the complaint was received by the Contractor Complaints Manager or, where that is not possible, as soon as reasonably practicable, the complainant must be given a written summary of the investigation and its conclusion.
- 9 Where the investigation of the complaint requires consideration of the Patient's medical record, the Contractor Complaints Manager must inform the Patient or person acting on his/her behalf if the investigation will involve disclosure of information contained in those records to a person other than the Contractor or an employee of the Contractor.
- 10 The Contractor must keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from Patients' medical records.
- 11 The Contractor shall inform the Board, at such intervals as the Board may require, of the number of complaints that it has received under the procedure in this Schedule 8 and shall complete and submit the KO41(b) return form annually and within the timescales required by the Department of Health.

**Schedule 9**  
**Representatives**

**Contractor Board Directors**

**Contractor Contract Managers**

**Clinical Commissioning Group (clause 6.1)**

**CCG contractor liaison (clause 6.2)**

**Schedule 10**

**Exit Plan**

**Schedule 11**

**Transferring Employees and Staff Pensions**

**Annex 1**

**Transferring Employees**

## **Annex 2**

### **Staff Pensions**

#### **1.1 Introduction**

- 1.2 The Contractor is eligible to be an Employing Authority and can thereby provide the Eligible Employees with continued membership of the NHS Scheme. The Contractor shall use all reasonable endeavours to remain an Employing Authority until the Termination Date and shall comply with the provisions of the NHS Scheme Regulations in respect of the Eligible Employees with effect from and including the Commencement Date and until the Termination Date. The Contractor shall, within 21 days after the Commencement Date, supply to the Board written evidence confirming that the Contractor is eligible to be an Employing Authority.
- 1.3 If the Contractor employs any Eligible Employees from the Commencement Date and for any reason after the Commencement Date ceases to be an Employing Authority other than because it ceases to employ any Eligible Employees, then the Fair Deal shall apply in respect of the transfer of the employment of each Transferring Employee, future pension provision for them and the provision for transfer of their pension rights which have accrued in NHS Scheme. For the avoidance of doubt, the provisions of paragraphs 2 and 3 of this Annex shall apply in all cases.

#### **2.1 Indemnity Regarding Pension Benefits and Premature Retirement Rights.**

- 2.2 The Contractor agrees to indemnify the Board on demand against all liabilities, damages, losses, costs and expenses arising out of any claim by any person that the provision of (or failure to provide) pension benefits and premature retirement rights after the Commencement Date, or the level of such benefit provided are not in accordance with the Contractor's and/or sub-contractor's obligations under this Annex 2 of Schedule 11.

#### **3. Sub-Contractors**

- 3.1 In the event that the Contractor enters into a sub-contract in connection with the Agreement, it shall impose obligations on its sub-contractors in the same terms as those imposed on the Contractor in relation to pension benefits and premature retirement benefits in this Annex 2 of Schedule 11.
- 3.2 The Contractor shall indemnify and keep the Board indemnified in full against all costs and losses incurred by the Board or any New Contractor as a result of or in connection with any failure by the Contractor to comply with this Annex 2 of Schedule 11.

4. **New Joiners**

- 4.1 The Contractor shall and shall procure that any sub-contractor shall comply with the Cabinet Office statement entitled “Principles of Good Employment Practice” (December 2010) (as may be amended from time to time) including, but not limited to, the third principle in this statement entitled “a commitment to fair and reasonable terms and conditions.”

**Schedule 12**  
**Practice Leaflet**

A practice leaflet shall include:

- 1           The name of the party or parties comprising the Contractor.
- 2           In the case of an Agreement with a partnership:
  - 2.1           the names of all of the partners; and
  - 2.2           in the case of a limited partnership, the partners' status as a general or limited partner.
- 3           In the case of an Agreement with a company:
  - 3.1           the names of the directors, the company secretary and the shareholders of that company; and
  - 3.2           the address of the company's registered office.
- 4           The full name of each person performing Services under the Agreement.
- 5           The professional qualifications of each Health Care Professional performing Services under the Agreement.
- 6           Whether the Contractor undertakes the teaching or training of Health Care Professionals or persons intending to become Health Care Professionals.
- 7           The Contractor's Practice Area, including the area known as the outer boundary area, by reference to a sketch diagram, plan or postcode.
- 8           The address of each of the Practice Premises.
- 9           The Contractor's telephone and fax number and the address of its website (if any).
- 10          Whether the Practice Premises have suitable access for all disabled Patients and, if not, the alternative arrangements for providing services to such Patients.
- 11          How to register as a Patient.

- 12 The right of Patients to express a preference of practitioner in accordance with Schedule 5 paragraph 8 and the means of expressing such a preference.
- 13 The Services available under the Agreement.
- 14 The opening hours of the Practice Premises and the method of obtaining access to services throughout the Core Hours and (if applicable) during the Out of Hours period.
- 15 The criteria for home visits and the method of obtaining such a visit.
- 16 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.
- 17 If the Out of Hours services are not provided by the Contractor, the fact that the Board is responsible for commissioning the services.
- 18 The method by which Patients are to obtain repeat prescriptions.
- 19 If the Contractor offers Repeatable Prescribing Services, the arrangements for providing such services.
- 20 If the Contractor is a dispensing Contractor the arrangements for dispensing prescriptions.
- 21 How Patients may make a complaint or comment on the provision of services.
- 22 The rights and responsibilities of the Patient, including keeping appointments.
- 23 The action that may be taken where a Patient is violent or abusive to the Contractor or his Staff or other persons on the Practice Premises or in the place treatment is provided under the Agreement.
- 24 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.

- 25        The full name, postal and email address and telephone number of the Board.
- 26        Information about the assignment by the Contractor to its new and existing Patients of an Accountable GP in accordance with paragraph 30 of Schedule 5.
- 27        Information about the assignment by the Contractor to its Patients aged 75 and over of an Accountable GP under paragraph 4 of Schedule 5.